

## Complaint

**IN THE MATTER OF****RENOWN HEALTH****CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND  
SECTION 7 OF THE CLAYTON ACT**

*Docket No. C-4366; File No. 111 0101  
Complaint, August 3, 2012 – Decision, November 30, 2012*

This consent order addresses the acquisition by Renown Health of Sierra Nevada Cardiology Associates and Reno Heart Physicians. The complaint alleges that Renown Health violated Section 7 of the Clayton Act by substantially lessening competition in the market for cardiology services in and around Reno, Nevada. The consent order requires Renown Health to release a certain number of its cardiologist employees from their employment contracts freeing them to practice either as employees of other health care entities or as part of independent medical groups in the Reno area.

*Participants*

For the *Commission*: *Thomas Dahdouh, John Wiegand, and Erika Wodinsky.*

For the *Respondent*: *William Berlin, Ober Kaler; Kelly Testolin, in-house counsel.*

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Renown Health, directly or by or through its wholly-owned subsidiaries Nevada Heart Institute and NHI-1, Inc. (collectively “Renown Health”) has acquired the medical practices and assets of Sierra Nevada Cardiology Associates, Inc. (“SNCA”), and Reno Heart Physicians, Inc. (“RHP”), and has employed the physician members and physician employees previously providing cardiology services in connection with those entities, and has violated and is violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by it in respect thereof would

## Complaint

be in the public interest, hereby issues its Complaint, stating its charges as follows.

**NATURE OF THE CASE**

1. Renown Health's acquisition of two cardiology groups in Reno, Nevada, SNCA and RHP, and the employment of the doctors who had formerly practiced in association with these medical group entities, is likely to lead to anticompetitive effects including increased prices and reduced non-price competition. This consolidation resulted in 15 of the cardiologists who had been associated with SNCA and 17 of the physicians who had been associated with RHP becoming employees of Renown Health.

2. Prior to the transactions at issue, SNCA and RHP, the two largest groups of physicians providing adult cardiology services in the Reno/Sparks, Nevada Metropolitan Statistical Area ("Reno area"), competed head-to-head to serve cardiology patients.

3. As a result of Renown Health's acquisition of SNCA in 2010 and the employment of the SNCA-affiliated cardiologists, Renown Health employed approximately 47% of the cardiologists serving private patients in the Reno area. As a result of Renown Health's subsequent acquisition of RHP in 2011 and employment of the RHP-affiliated cardiologists, Renown Health then employed approximately 97% of the cardiologists serving private patients in the Reno area. Renown Health's acquisition of RHP makes it likely that Renown Health will be able to exercise unilateral market power in the Reno area, which will result in higher prices and a reduction in non-price competition for the provision of cardiology services.

4. Although health plans are the direct customers for cardiology services provided to many patients, higher prices for those services are passed on to employers, unions, and other group purchasers of health insurance plans, and such costs are ultimately borne by patients in the Reno area through higher premiums, co-payments, and other out-of-pocket expenditures.

5. The price and non-price competition eliminated by Renown Health's acquisition of RHP and employment of its

## Complaint

cardiologists will not be replaced by other providers. Prior to the acquisition, RHP was the only group of cardiologists that competed meaningfully with Renown Health for Reno-area cardiology patients.

**RESPONDENT**

6. Respondent Renown Health is a non-profit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 1155 Mill Street, Reno, Nevada 89502. In Reno, Renown Health owns and operates Renown Regional Medical Center, with 808 licensed beds, and Renown South Meadows Medical Center, with 76 licensed beds. Renown Health also operates Carson Valley Medical Center in Gardnerville, Nevada, as part of a joint venture with Barton Healthcare Service. In addition, Renown Health owns and operates Hometown Health Plan, a commercial health insurance company that does business in northern Nevada as well as other portions of the state.

7. Respondent Renown Health is, and at all times herein has been engaged in commerce or in activities in or affecting commerce within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12. The acquisitions of SNCA and RHP constitute acquisitions under Section 7 of the Clayton Act, 15 U.S.C. § 18.

**THE TRANSACTIONS**

8. On or about November 24, 2010, Arger, DiPaolo, Drummer, Fuller, Newmark & Spring, a Nevada professional corporation doing business as SNCA was converted to a Nevada for-profit corporation. SNCA, was then merged into Renown Health. In addition, Renown Health purchased certain of SNCA's assets, including its interest in a free-standing cardiac catheterization laboratory and its goodwill, for approximately \$3.4 million. This merger of SNCA into Renown Health ("SNCA merger") became effective on January 1, 2011.

9. On or about November 24, 2010, 15 physicians associated with SNCA signed employment agreements with Renown Health, providing that each such physician would become employed by Renown Health for a specified numbers of years, for a salary and

## Complaint

certain specified benefits. The effective date of the employment agreements between Renown Health and each of the SNCA physicians was January 1, 2011.

10. The employment agreements between the former SNCA doctors and Renown Health contain “covenants,” including a covenant not to compete, a covenant of non-solicitation, and a covenant of non-interference. The covenant not to compete contained in the employment agreements between Renown Health and each of the physicians formerly affiliated with SNCA provides, *inter alia*, that a Renown Health-employed cardiologist who chooses to leave Renown Health’s employ is barred for two years from negotiating or entering into an agreement to provide cardiology services at any hospital, medical practice or medical facility at a location within 50 miles of the physician’s principal place of practice with Renown Health, or from owning, operating, managing, becoming an employee, or in any way becoming connected with any hospital, medical practice or medical facility at a location within 50 miles of the physician’s principal place of practice with Renown Health. The covenant of non-solicitation contained in the employment agreements between Renown Health and each of the physicians formerly affiliated with SNCA provides, *inter alia*, that a Renown Health-employed cardiologist who chooses to leave Renown Health’s employ is barred for a period of two years after leaving from soliciting or contacting former patients. The covenant of non-interference contained in the employment agreements between Renown Health and each of the physicians formerly affiliated with SNCA provides, *inter alia*, that a Renown Health-employed cardiologist who chooses to leave Renown Health’s employ is barred from causing any entity with a contractual relationship with Renown Health from terminating such relationship with Renown Health.

11. On or about March 17, 2011, Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson and Zebrack, Ltd., a professional corporation doing business as Reno Heart Physicians was converted to a Nevada for-profit corporation. This corporation was then merged into Renown Health. In addition, Renown Health purchased certain of RHP’s assets, for approximately \$4 million. This merger of RHP into Renown

## Complaint

Health (“RHP merger”) became effective on or about March 29, 2011.

12. On or about March 17, 2011, 17 physicians associated with RHP signed employment agreements with Renown Health, providing that each such physician would become employed by NHI for specified numbers of years, for a salary and certain specified benefits. The effective date of the employment agreements between Renown Health and each of the RHP physicians was March 29, 2011. Of the 17 cardiologists affiliated with RHP who became Renown Health employees, 16 practiced primarily and regularly in the Reno area; one cardiologist practiced regularly in an office located in Carson City, Nevada. The employment agreements between the former RHP doctors and Renown Health also contain “covenants” including a covenant not to compete, a covenant of non-solicitation, and a covenant of non-interference, which are identical or virtually identical to those contained in the employment agreements between the SNCA doctors and Renown Health.

13. Prior to the SNCA merger, Renown Health did not employ any cardiologists. With the SNCA merger and employment of the former SNCA cardiologists, Renown Health employed 15 cardiologists who competed with RHP in the provision of cardiology services in the Reno area. After the RHP merger, Renown Health, either directly or through its subsidiaries, employed 31 cardiologists in Reno and one cardiologist in Carson City.

14. The effect of the acquisition of RHP by Renown Health was to combine 31 of the 32 cardiologists then practicing in the Reno area under Renown Health, the owner and operator of the largest hospital system in that area.

**THE RELEVANT MARKET**

15. For the purposes of this Complaint, the relevant line of commerce is the provision of adult cardiology services. “Cardiology services” includes diagnostic or treatment services by cardiologists who provide non-invasive services (general cardiology), invasive services (including diagnostic cardiac catheterization procedures), interventional cardiology (including

## Complaint

placement of stents), and electrophysiology services (including the insertion and/or removal of devices related to heart rhythm functions). For purposes of this complaint, cardiology services does not include pediatric cardiology services or cardiac surgery.

16. The relevant geographic market in which to assess the effect of the SNCA and RHP mergers with Renown Health is the Reno area, including Washoe County, Nevada, but not including Carson City, Nevada.

**THE STRUCTURE OF THE MARKET**

17. The merger of RHP into Renown Health and the employment of the RHP physicians by Renown Health reduced from two to one the number of adult cardiology service providers that offer a broad range of adult cardiology subspecialties in the Reno area. These cardiology subspecialties, including non-invasive, invasive, interventional, and electrophysiology, are required to fully meet the needs of patients with heart conditions. At the time of the RHP transaction, the only other cardiologist serving adult cardiology patients in the Reno area was a sole practitioner, who could not provide a comparable range of services.

18. At the time of the consummation of the transaction at issue here, Renown Health employed 97% of the cardiologists in the relevant market. The Herfindahl-Hirschman Index (“HHI”) in the market for the provision of cardiology services, based on the number of cardiologists serving the market, increased from 4707 to 9395, an increase of 4688 points.

19. Since the time the former RHP doctors became employees of Renown Health, two Renown Health cardiologists have left the Reno area. In addition, three cardiologists who are not affiliated with Renown Health have started practicing cardiology in the Reno area. As a result, Renown Health now employs approximately 88% of the cardiologists in the area. The current HHI, based on the number of cardiologists serving the market is now 7815, an increase of 3108 points over the HHI prior to the Renown Health’s acquisition of RHP.

## Complaint

20. Prior to January 1, 2011, the effective date of the SNCA physicians' employment by Renown Health, SNCA and RHP were actual and substantial competitors in the relevant market. After Renown Health's employment of the SNCA physicians, Renown Health became an actual and substantial competitor of RHP in the provision of cardiology services to patients in the Reno area.

21. Prior to March 29, 2011, the effective date of the RHP physicians' employment by Renown Health, health plans and self-insured employers, seeking to contract with cardiologists for the provision of cardiology services to their members and/or employees, would have been able to choose between RHP and Renown Health based on price and non-price terms offered by the respective groups of cardiologists. Health plans and employers contracting for adult cardiology services benefitted from this head-to-head competition with lower prices and improved quality and service.

22. The availability and number of alternative providers is the primary source of a health plan's bargaining power to negotiate competitive rates on behalf of its members. Thus, an acquisition that reduces a health plan's choice of providers reduces the health plan's bargaining power when negotiating with providers, and can lead to higher prices and reduced quality. Renown Health's acquisition of RHP reduced the number of cardiology practices capable of providing a full range of cardiology services from two to one, creating a significant risk of higher prices and reduced quality.

**ENTRY CONDITIONS**

23. The most significant barrier to entry into the market for adult cardiology services in the Reno area is the need for new entrants to recruit a sufficient number of cardiologists with appropriate training, experience and areas of specialization. Because cardiologists within a practice must provide coverage for each other, unless an entity can recruit a sufficient number of cardiologists in each necessary subspecialty, any cardiologists recruited to the market will not have a sufficient number of other cardiologists with whom they can share responsibilities.

## Complaint

24. New entry into the relevant geographic market sufficient to deter or counteract the anticompetitive effects described in Paragraphs 25 and 26 is unlikely to occur in a timely manner because recruitment of a sufficient number of cardiologists to provide a competitive constraint to Renown Health would take more than two years.

**EFFECTS OF THE TRANSACTION**

25. The effects of Renown Health's acquisition of RHP and employment of the RHP physicians may be substantially to lessen competition and tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in the following ways, among others:

- a. eliminating actual, direct and substantial competition between Renown Health and RHP in the market for the provision of cardiology services;
- b. increasing the ability of the merged entity unilaterally to raise prices for cardiology services; and
- c. reducing incentives to improve service or product quality in the relevant markets

26. After the consummation of the transaction with its combination of the two largest cardiology physician groups in the Reno area, health plans can no longer threaten, implicitly or explicitly, to exclude Renown Health or the cardiologists employed by Renown Health. This substantially reduces the health plans' bargaining power, and substantially increases Renown Health's bargaining power, when negotiating rates for adult cardiology services in the Reno area.

**VIOLATIONS CHARGED**

27. The transaction described in Paragraph 11, and Renown Health's subsequent employment of RHP doctors, described in Paragraph 12, constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.



## Decision and Order

**WHEREFORE, THE PREMISES CONSIDERED**, the Federal Trade Commission on this third day of August, 2012, issues its Complaint against said Respondent.

By the Commission.

**DECISION AND ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition by Renown Health of Reno Heart Physicians (“RHP”), and Renown Health (hereafter referred to as “Renown Health” or “Respondent Renown”) having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Renown with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

Respondent Renown, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent Renown of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Renown that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent Renown has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Suspend Enforcement of Renown Non-Compete (“Order to Suspend Enforcement”), and having accepted the executed Consent Agreement and placed such

## Decision and Order

Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments filed thereafter by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Renown is a not-for-profit corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada with its office and principal place of business located at 1155 Mill Street, Reno, Nevada 89502.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent Renown, and the proceeding is in the public interest.

**ORDER****I.**

**IT IS ORDERED** that, as used in this Order, the following definitions shall apply:

- A. “Renown Health” means Renown Health, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Renown Health, including but not limited to Nevada Heart Institute, Inc., and NHI-1, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acceptable Termination” means any termination of employment with Renown Health resulting from (1) a Termination Notification which, upon consultation between the Monitor and the Commission’s staff, is submitted, after the Order becomes final, to Renown

## Decision and Order

Health by the Monitor, or (2) Renown Health notifying the Monitor that a Cardiologist Employee is otherwise leaving employment with Renown Health with the intention of Participating in a Reno Cardiology Practice for a period of at least one year and the Monitor consulting with the Commission's staff regarding such notice.

- D. "Cardiologist Employee" means a Physician who provides Cardiology Services in the Reno/Sparks Geographic Area as an employee of Renown Health and who, prior to providing Contract Services for Renown Health, offered Cardiology Services as a Participant in SNCA or as a Participant in Reno Heart.
- E. "Cardiology Services" means medical professional services in general cardiology (*e.g.*, medical management of heart and vascular conditions), invasive cardiology (*e.g.*, cardiac catheterizations), interventional cardiology (*e.g.*, angioplasty, placement of stents), and electrophysiology (*e.g.*, placement of pacemakers and defibrillators); *provided, however*, Cardiology Services does not include services provided to pediatric patients or services provided by cardiac surgeons.
- F. "Contract Services" means any service performed pursuant to any Employment Agreement between Renown Health and a Cardiologist Employee.
- G. "Employment Agreement" means, as applicable to the Cardiologist Employee, either an employment agreement between Renown Health and a Participant in SNCA entered into on or around November 24, 2010, or an employment agreement between Renown Health and a Participant in Reno Heart entered into on or around March 17, 2011.
- H. "Monitor" means the Person appointed to act as monitor by the Commission pursuant to Paragraph VII of this Order.

## Decision and Order

- I. “Participate” in an entity or an arrangement means (1) to be a partner, joint venturer, shareholder, owner, member, or employee of such entity or arrangement, or (2) to provide services, agree to provide services, or offer to provide services through such entity or arrangement. This definition applies to all tenses and forms of the word “participate,” including but not limited to, “participating,” “participated,” “participation,” and “participant.”
- J. “Payer” means any Person that pays, or arranges for the payment, for all or any part of any physician services for itself or for any other person, as well as any person that develops, leases, or sells access to networks of physicians.
- K. “Person” means any natural person or artificial person, including, but not limited to, any corporation, unincorporated entity, or government entity. For the purpose of this Order, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.
- L. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- M. “Relating To” means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to. This definition applies to all tenses and forms of the word “relate to,” including but not limited to, “relates to,” and “related to.”
- N. “Release Period” means the period of time beginning on the date this Order becomes final and ending thirty (30) days from the date this Order becomes final.
- O. “Reno Cardiology Practice” means Cardiology Services offered in the Reno/Sparks Geographic Area by a cardiologist Participating in a medical practice or in an employment arrangement, excluding that of a Cardiologist Employee.

## Decision and Order

- P. “Reno Heart Physicians” or “Reno Heart” means the professional corporation formerly known as Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson and Zebrack, Ltd. doing business as Reno Heart Physicians.
- Q. “Reno/Sparks Geographic Area” means the Reno/Sparks Metropolitan Statistical Area, as defined by the United States Office of Management and Budget, consisting of Washoe and Storey Counties.
- R. “Renown Non-Compete Provisions” means, (1) with respect to the Share Purchase Agreement (i) Sections 10.5 as it relates to disclosing the identities of and communicating with patients treated by a Cardiologist Employee; and (ii) Section 10.7(a) as it relates to interfering with relationships between Renown and patients treated by a Cardiologist Employee; (iii) Sections 10.6, 10.7(b)-(d), 10.8, 10.9, 10.12, 10.15, and Exhibit A (Additional Breach Damages - Article 10) as such action under (i), (ii) or (iii) relates to a Cardiologist Employee Participating in a Reno Cardiology Practice pursuant to an Acceptable Termination; and (2) with respect to any Employment Agreement between Renown Health and any Cardiologist Employee, (i) Sections 7.5 and 11 as they relate to disclosing the identities of and communicating with patients treated by a Cardiologist Employee; (ii) Section 7.7(a) as it relates to interfering with relationships between Renown and patients treated by a Cardiologist Employee; (iii) Sections 7.6, 7.7(b)-(d), 7.8, 7.9, 7.12, 7.15, 10.4, and Exhibit C as such action under (i), (ii) or (iii) relates to a Cardiologist Employee Participating in a Reno Cardiology Practice pursuant to an Acceptable Termination.
- S. “Separation Agreement” and “Separation Agreements” mean any agreement Related To terms by which a Cardiologist Employee terminates his or her Contract Services. *Provided, however*, a Separation Agreement

## Decision and Order

shall not include (1) any agreement between Renown Health and such Cardiologist Employee to Participate in a Reno Cardiology Practice for a period of at least a year; or (2) any agreement by Renown Health to provide support to such Cardiologist Employee to Participate Reno Cardiology Practice.

- T. “Share Purchase Agreements” means any share purchase agreements entered into between Renown Health and SNCA, or any of SNCA’s members, in or around December 2010, and any share purchase agreement entered into between Renown Health and Reno Heart Physicians, or any of its members, in or around March 2011.
- U. “Suspension Period” means the period from the date the Order to Suspend Enforcement becomes final until the Termination Date.
- V. “SNCA” means Sierra Nevada Cardiology Associates, the professional corporation formerly known as Arger, DiPaolo, Drummer, Fuller, Newmark & Spring doing business as Sierra Nevada Cardiology Associates.
- W. “Termination Date” means the date on which the Decision and Order becomes final, or on the date Renown Health receives notice from the Commission that a Decision and Order will not be issued in this matter.
- X. “Termination Notification” means (1) written notification submitted to the Monitor by a Cardiologist Employee of that employee’s intention to terminate his or her Employee Agreement and intention to Participate in a Reno Cardiology Practice for a period of at least one year after such termination, or (2) independent determination by the Monitor that a Cardiologist Employee intends to Participate in a Reno Cardiology Practice for a period of at least one year after such termination.

## Decision and Order

**II.**

**IT IS FURTHER ORDERED** that Renown Health shall:

- A. Not enforce any of the Renown Non-Compete Provisions against any Cardiologist Employee for any activity that Cardiologist Employee engaged in during the Suspension Period through the Release Period that Relates To providing Termination Notification; *provided, however*, that this Paragraph II.A does not prohibit Renown Health from enforcing any of the Renown Non-Compete Provisions against any Cardiologist Employee who terminates Contract Services prior to the Release Period;
- B. Within two (2) days from the date the Order becomes final, certify that Renown Health has sent by first-class mail, return receipt requested to each Cardiologist Employee the letter attached as Appendix A to this Order within two (2) days of the Agreement Containing Consent Order in this matter being placed on the public record;
- C. For each Termination Notification that is (1) submitted during the Release Period and (2) received by Renown Health as an Acceptable Termination, terminate Contract Services of the Cardiologist Employee who submitted that Termination Notification, and allow that Cardiologist Employee to leave Renown Health's employment on or before sixty (60) days of Renown Health's receipt of such notification from the Monitor;
- D. For any activity Related To this Paragraph II, waive all rights to seek or obtain legal or equitable relief for breach of contract for violation by any Cardiologist Employee of any of the Renown Non-Compete Provisions; and
- E. Not take any other action to discourage, impede, or otherwise prevent any Cardiologist Employee from terminating Contract Services pursuant to this Paragraph II.

## Decision and Order

*Provided, however*, upon receipt by the Commission of Renown Health's Paragraph VIII.A verified report of Acceptable Termination by ten (10) Cardiologist Employees, the Release Period shall end. *Provided further* that, if during the Release Period there are more than ten (10) Acceptable Terminations, the Monitor, after consultation with the Commission's staff, shall forward to Renown Health the first ten (10) such notifications received by the Monitor and shall not reveal the identity of any of the additional Cardiologist Employees who submitted Termination Notifications.

**III.**

**IT IS FURTHER ORDERED** that, if after the expiration of the Release Period, Renown Health has not received Acceptable Termination for at least six (6) Cardiologist Employees, then until receipt by the Commission of Renown Health's Paragraph VIII.A verified report of Acceptable Termination by six (6) Cardiologist Employees, Renown Health shall:

- A. Not enforce, directly or indirectly, the Renown Non-Compete Provisions against any Cardiologist Employee seeking to provide Termination Notification;
- B. Upon Acceptable Termination of any Cardiologist Employee, terminate Contract Services of each such Cardiologist Employee and allow that cardiologist to leave Renown Health's employment on or before ninety (90) days from the date such notification was received;
- C. For any activity Related To this Paragraph III, waive all rights to seek or obtain legal or equitable relief for breach of contract for violation by any Cardiologist Employee of any of the Renown Non-Compete Provisions; and
- D. Not take any other action to discourage, impede, or otherwise prevent any Cardiologist Employee from



## Decision and Order

terminating Contract Services pursuant to this Paragraph III.

**IV.****IT IS FURTHER ORDERED** that:

- A. With respect to each Cardiologist Employee who terminates his or her Contract Services pursuant to Paragraph II or III of this Order, Renown Health shall not:
1. Offer any incentive to such Cardiologist Employee to decline to provide Cardiology Services in a Reno Cardiology Practice;
  2. Enforce any provision of such Cardiologist Employee's Employment Agreement that would prevent that cardiologist from informing patients treated by that cardiologist of his or her new Reno Cardiology Practice and providing Cardiology Services to those patients;
  3. Enforce any of the Renown Non-Compete Provisions for any activity Relating To terminating Contract Services;
  4. Require any Cardiologist Employee, prior to terminating his or her Contract Services to enter into a Separation Agreement, including but not limited to any agreement to provide any payment to Renown Health;
  5. Prevent, impede, or otherwise interfere with the provision of Cardiology Services by such Cardiologist Employee; *provided however*, that nothing in this Paragraph IV.A.5 shall require Renown Health to include any cardiologist in Renown Health's emergency room call panel, in the provider network of any health plan, network, or provider organization or to compensate any cardiologist for providing professional services to

## Decision and Order

Renown Health or to its patients or its contractors beyond any requirement contained in Paragraph V of this Order;

6. For a period of three (3) years from the date this Order becomes final deny, terminate or suspend medical staff privileges, or reduce or change medical staff membership status, of such Cardiologist Employee based solely on the status of that cardiologist's employment or lack of employment by Renown Health. *Provided, however,* that Renown Health may deny, terminate or suspend a cardiologist's medical staff privileges, or reduce or change medical staff membership status, due to (a) quality or patient safety determinations; or (b) violations by the cardiologist of facility rules and regulations or standards of conduct that apply to all medical staff members; and
  7. For a period of two (2) years from the date such Cardiologist Employee terminates his or her Contract Services, directly or indirectly, solicit, induce, or attempt to solicit or induce the employment of such Cardiologist Employee. *Provided, however,* that Renown Health may make general advertisements for cardiologists including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the cardiologist who so terminated his or her employment or who was released from the Renown Non-Compete Provisions. *Provided further* that Renown Health may employ any cardiologist who applies to Participate with Renown Health, as long as such cardiologist was not solicited by Renown Health in violation of this Paragraph.
- B. The purpose of Paragraphs II, III, and IV of this Order is to ensure that those Cardiologist Employees who terminate their Contract Services can offer Cardiology Services in a Reno Cardiology Practice in competition

## Decision and Order

with Renown Health and to remedy the lessening of competition alleged in the Commission's Complaint.

**V.**

**IT IS FURTHER ORDERED** that, for a period of one (1) year from the date any Cardiologist Employee terminates Contract Services pursuant to Paragraphs II or III of this Order, if that cardiologist's Employment Agreement with Renown Health contained any provisions for support in the event that termination of employment was required by a determination, order, or agreement with a governmental agency, Renown Health shall provide such support in accordance with the terms of the cardiologist's Employment Agreement if requested by the Cardiologist Employee; *provided, however*, that Renown Health shall not, whether or not it is so provided in the Employment Agreement, negotiate with any Payer on behalf of that cardiologist.

**VI.**

**IT IS FURTHER ORDERED** that for a period of five (5) years from the date this Order becomes final, Renown Health shall not, without providing advance written notification to the Commission in the manner described in this paragraph, directly or indirectly:

- A. Acquire any assets of or financial interest in any group that provides Cardiology Services in the Reno/Sparks Geographic Area; or
- B. Enter into any Contract Services with any group that provides Cardiology Services in the Reno/Sparks Geographic Area.

Said advance written notification shall contain (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) documents that would be responsive to Item 4(c) and Item 4(d) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules,

## Decision and Order

16 C.F.R. § 801-803, Relating To the proposed transaction (hereinafter referred to as “the Notification”).

*Provided, however,* that (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed only with the Secretary of the Commission and need not be submitted to the United States Department of Justice, and (iii) the Notification is required from Renown Health and not from any other party to the transaction. Renown Health shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Renown Health shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

*Provided further,* that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

**VII.****IT IS FURTHER ORDERED** that:

- A. Judge Charles McGee shall be appointed Monitor to assure that Renown Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. No later than one (1) day after this Order issues, Renown Health shall, pursuant to the Monitor Agreement, attached as Appendix B and Confidential Appendix B-1 to this Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform its duties and responsibilities in a manner consistent with the purposes of this Order.

## Decision and Order

- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Renown Health, which consent shall not be unreasonably withheld. If Renown Health has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Renown Health of the identity of any proposed Monitor, Renown Health shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Renown Health shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Renown Health's compliance with the terms of this Order and the Order to Suspend Enforcement in a manner consistent with the purposes of this Order.
- D. Renown Health shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Renown Health's compliance with the terms of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to:
    - a. receiving Termination Notifications from Cardiologist Employees;
    - b. notifying each Cardiologist Employee that submitted a Termination Notification whether or not such notification will be an Acceptable Termination;

## Decision and Order

- c. forwarding such Acceptable Terminations to Renown Health pursuant to this Order; and
  - d. assuring that Renown Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Monitor shall serve for such time as is necessary to monitor Renown Health's compliance with the Paragraphs II, III, IV.A.1-4, and V of this Order.
4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Renown Health's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, Related To Renown Health's compliance with its obligations under this Order. Renown Health shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Renown Health's compliance with this Order.
5. The Monitor shall serve, without bond or other security, at the expense of Renown Health on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Renown Health, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.

## Decision and Order

6. Renown Health shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
7. Renown Health shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Renown Health, and any reports submitted by a current or former Cardiologist Employee with respect to the performance of Renown Health's obligations under this Order.
8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, until the later of: (i) one (1) year; or (ii) no fewer than six (6) Cardiologist Employees have terminated their Employment Agreements to provide Cardiology Services in the Reno/Sparks Geographic Area, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Renown Health of its obligations under this Order.
9. Renown Health may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.

## Decision and Order

- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph VII.
- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- H. The Monitor appointed pursuant to this Order may be the same Person appointed as Monitor under the Order to Suspend Enforcement.

**VIII.****IT IS FURTHER ORDERED** that:

- A. No later than thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Renown Health has fully complied, as relevant, with Paragraphs II, and III of this Order, Renown Health shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with all the terms of this Order. Renown Health shall submit at the same time a copy of these reports to the Monitor.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next four (4) years, Renown Health shall submit to the Commission verified written reports setting forth in



## Decision and Order

detail the manner and form in which it is complying and has complied with this Order.

**IX.**

**IT IS FURTHER ORDERED** that Renown Health shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Renown Health;
- B. Any proposed acquisition, merger or consolidation of Renown Health; or
- C. Any other change in the Renown Health, including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

**X.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Renown Health, Renown Health shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Renown Health and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Renown Health Related To compliance with this Order, which copying services shall be provided by Renown Health at the request of the authorized representative(s) of the Commission and at the expense of Renown Health; and
- B. Upon five (5) days' notice to Renown Health and without restraint or interference from Renown Health, to interview officers, directors, or employees of Renown Health, who may have counsel present, regarding such matters.

## Decision and Order

**XI.**

**IT IS FURTHER ORDERED** that this Order shall terminate on November 30, 2022.

By the Commission.

**Appendix A - Letter to Cardiologist Employees**

Dear Physician:

Renown Health (“Renown”) has entered into an agreement with the Federal Trade Commission to resolve allegations that its acquisitions of certain cardiology medical practices and employment of the associated physicians has or will restrict competition in violation of Section 7 of the Clayton Act. Although Renown has not admitted liability or admitted that the facts alleged in the Commission’s complaint (other than jurisdictional facts) are true, it has agreed to two FTC orders containing certain terms which the Commission believes will ameliorate the competitive effects of the acquisitions.

For your convenience, Renown’s obligations under the FTC’s Orders, including the terms under which you may terminate your employment, are summarized below. These obligations are described more fully in the FTC’s Orders and its Analysis to Aid Public Comment which are both attached to this letter. **Nothing in this summary is intended to modify any of the terms of the Commission’s Orders or to provide legal advice.**

Description of the Orders: The first order (“Order to Suspend Enforcement of Renown Non-Compete” or “Order to Suspend”) establishes a period of time during which you, as a cardiologist currently employed by Renown, may explore all employment and professional opportunities in the Reno/Sparks area, whether as an employee, a member of a medical group, or in private practice. Renown cannot enforce any non-compete or non-solicitation

## Decision and Order

provisions in your employment contract to interfere with your discussions during this time period. If you actually terminate your employment with Renown during this period, however, the Order to Suspend does not prohibit Renown from pursuing its contract rights.

The second order (“Decision and Order”), if accepted by the Commission after a period allowing for public comment, will allow you to terminate your employment with Renown without penalty so long as the following conditions are met:

- (1) You must submit written notice of your intention to terminate your employment with Renown to the special monitor who has been appointed for the purpose of assuring confidentiality. Contact information for the monitor is provided at the conclusion of this letter;
- (2) You must intend to continue to practice in the Reno/Sparks area for at least one year;
- (3) You must be among the first 10 physicians to submit your notice to terminate employment. Renown is not required to terminate more than 10 employment contracts. To protect the confidentiality of the doctors who want to leave, the monitor will submit to Renown no more than the first 10 notices he receives; and
- (4) You must leave employment with Renown within 60 days of Renown receiving your notice from the monitor, but you may not leave prior to the monitor delivering your notice to Renown.

Timing of the Orders: The Order to Suspend begins on August 6, 2012, and continues for at least 30 days while the Commission receives public comment on the Decision and Order and considers those comments. You may enter into discussions and negotiations for new employment during this period. If you decide during this period to terminate your employment, you may notify the special monitor so that your name will be included in the event that the Decision and Order is accepted as final. Because the Order to Suspend will continue in effect until the Commission votes to accept (or reject) the Decision and Order, the conclusion of this

## Decision and Order

time period cannot be determined at this time. It will, however, not end before September 5, 2012.

If the Commission accepts and issues the Decision and Order as final, a second 30-day period (Release Period) will begin. During this period, you may begin or continue discussions and negotiations for new employment. If you decide to terminate your employment, you should notify the monitor of your intention. The monitor will forward to Renown the names of the first ten physicians who have provided notice of their desire to terminate their employment. Renown is not required to allow more than 10 physicians who have given notice to the monitor and satisfied all of the conditions described above to terminate their employment without any penalty. On the other hand, if at the end of this 30-day Release Period fewer than six doctors have notified the monitor of their intent to terminate employment, the period in which cardiologists may continue to explore other employment opportunities and leave Renown's employment without penalty will remain open. This period will continue to remain open until six (rather than 10) cardiologists have terminated their employment with Renown.

**PLEASE NOTE:**

- The Orders do not *require* any doctor to terminate employment with Renown or to work for any other entity.
- The Orders do not *require* Renown to fire any doctors. However, the Orders also do not prohibit Renown from negotiating with a doctor regarding a mutual agreement for that physician's employment to be terminated.
- The Orders prohibit Renown from enforcing any non-compete or non-solicitation provisions in any contract, pursuing any breach of contract action, or taking any retaliatory action against any physician who either terminated his or her employment under the terms of the Orders or who sought new employment as allowed by the Orders but decided not to leave.
- If you terminate your employment at times or under terms not described in the Decision and Order, the Decision and

## Decision and Order

Order does not prohibit Renown from pursuing its contract rights.

- Renown may be required to provide you with transitional assistance if you terminate employment to practice as an independent physician (rather than as an employee of another entity) in the Reno/Sparks area. Please review the proposed Decision and Order and your employment agreement with Renown (or contact the monitor) to determine whether these transitional services are available to you.
- If six or more physicians have terminated their employment with Renown by the end of the Release Period, Renown may pursue its legal remedies against any employee who *subsequently* terminates employment with Renown in violation of that employee's contract.

If you have questions about the information contained in this letter or in the Analysis to Aid Public Comment, including questions regarding timing or implementation of the Orders, please contact the monitor, Judge Charles McGee at (775) 823-9975, or FTC's Bureau of Competition's Compliance Division at (202) 326-2031.

Written notifications of intent to terminate employment should be provided to:

Judge Charles McGee  
1575 Delucchi Lane, Suite 115-1  
Reno, NV 89502  
Facsimile: (775) 823-9973  
Email: [judgemcgee@msn.com](mailto:judgetcmcgee@msn.com)

## Decision and Order

**Appendix B – Monitor Agreement  
[Redacted Public Version]**

## MONITOR AGREEMENT

This Monitor Agreement (“Monitor Agreement”) entered into this 18<sup>th</sup> day of July, 2012 by Renown Health and Judge Charles McGee provides as follows:

WHEREAS, the United States Federal Trade Commission (the “Commission”), *In the Matter of Renown Health*, has accepted for public comment an Agreement Containing Consent Order (“Consent Agreement”), incorporating an Order to Suspend Enforcement of Renown Non-Compete (“Order to Suspend Enforcement”) and a Decision and Order (“Decision and Order”), collectively referred to as the “Commission Orders,” with Renown Health, and the State of Nevada, through its Attorney General (“Nevada Attorney General”), has filed in the United States District Court for the District of Nevada, a Final Judgment (“Nevada Order”) with Renown Health (collectively, the Commission Orders and the Nevada Order are referred to as the “Orders”). The Orders, among other things, require Renown Health to waive enforcement of certain contractual terms with its Cardiologist Employees so that a certain number of those employees can leave Renown Health’s employment to practice cardiology in the Reno area, and provides for the appointment of one or more Monitors to ensure that Renown Health complies with its obligations under the Orders;

WHEREAS, the staff of the Commission and the Nevada Attorney General have appointed Charles McGee as such monitor (the “Monitor”) pursuant to the Orders to monitor Renown Health’s compliance with the terms of the Consent Agreement and Orders, and Charles McGee has consented to such appointment;

WHEREAS, the staff of the Commission and the Nevada Attorney General on July 17, 2012 notified Renown Health of the selection of Judge Charles McGee as the Monitor, and Renown Health on July 18, 2012 agreed to the selection of Judge Charles McGee, and is executing this agreement that, subject to the prior approval of the Commission and the Nevada Attorney General, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Renown Health’s compliance with the relevant requirements of the Orders in a manner consistent with the purpose of the Orders;

WHEREAS, this Monitor Agreement, although executed by the Monitor and Renown Health is not effective for any purpose, including but not limited to imposing rights and responsibilities on Renown Health or the Monitor under the Orders, until it has been approved by the Commission and the Nevada Attorney General; and

WHEREAS, the parties to this Monitor Agreement intend to be legally bound;

NOW, THEREFORE, the parties agree as follows:

1. Capitalized terms used herein and not specifically defined herein shall have the respective definitions given to them in the Orders.
2. The Monitor shall have all of the powers and responsibilities conferred upon the Monitor by the Orders.

## Decision and Order

3. Renown Health hereby agrees that it will fully comply with all terms of the Orders requiring it to confer all rights, powers, authority and privileges upon the Monitor, or to impose upon itself any duties or obligations with respect to the Monitor, to enable the Monitor to perform the duties and responsibilities of the Monitor thereunder.
4. The Monitor shall have the power and authority to monitor Renown Health's compliance with the terms of the Orders, and shall carry out the duties of the Monitor in consultation with the Commission and the Nevada Attorney General, including but limited to:
  - a. receiving Termination Notifications from Cardiologist Employees;
  - b. receiving from Renown Health notification that it has terminated the employment of a Cardiologist Employee;
  - c. notifying each Cardiologist Employee that submitted a Termination Notification whether or not such notification will be an Acceptable Termination;
  - d. forwarding all Acceptable Terminations to Renown Health pursuant to the Order; and
  - e. assuring Renown Health's expeditious compliance with all of its obligations and performance of all of its responsibilities as required by the Orders.
5. Renown Health further agrees that:
  - a. it will provide the Monitor with copies of all reports submitted to the Commission and the Nevada Attorney General pursuant to the Orders, simultaneous with the submission of such reports to the Commission and the Nevada Attorney General, for the duration of the Monitor's term under this Agreement;
  - b. it will, subject to any demonstrated legally recognized privilege, grant the Monitor full and complete access to Renown Health's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Renown Health's compliance with their obligations under the Orders; and
  - c. it will cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Renown Health's compliance with the Orders.
6. Renown Health shall promptly notify the Monitor of any significant written or oral communication that occurs after the date of this Monitor Agreement between Renown Health, the Commission, and the Nevada Attorney General related to the Orders, together with copies of such communications.

## Decision and Order

7. The Monitor shall serve, without bond or other security, at the expense of Renown Health on such reasonable and customary terms and conditions as the Commission and the Nevada Attorney General may set. The Monitor shall have authority to employ, at the expense of Renown Health, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
8. Renown Health shall pay the Monitor, in accordance with the fee schedule attached hereto as Confidential Appendix A, for all reasonable time spent in the performance of the Monitor's duties and responsibilities, including all monitoring activities, all work in connection with the negotiation and preparation of this Monitor Agreement, all work in the nature of final reporting and file closure, and all reasonable and necessary travel time.
  - a. In addition, Renown Health will pay (i) all out-of-pocket expenses reasonably incurred by the Monitor in the performance of the Monitor's duties and responsibilities, including any international telephone calls and any auto, train or air travel in the performance of the Monitor's duties, and (ii) all fees and disbursements reasonably incurred by such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
  - b. The Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.
9. The Monitor shall maintain the confidentiality of all information provided to the Monitor by Renown Health. Such information shall be used by the Monitor only in connection with the performance of the Monitor's duties pursuant to this Monitor Agreement. Such information shall not be disclosed by the Monitor to any third party other than:
  - a. persons employed by, or working with, the Monitor under this Monitor Agreement, in which case such persons shall be informed of, and agree in writing to abide by, the confidentiality obligations applicable to the Monitor, in accordance with Paragraph 12 below, or
  - b. persons employed at or retained by the Commission or the Nevada Attorney General who are working on this matter.
10. The Monitor shall maintain a record and inform the Commission and the Nevada Attorney General of all persons (other than representatives of the Commission and the Nevada Attorney General) to whom confidential information related to this Monitor Agreement has been disclosed.



## Decision and Order

11. The Monitor shall act in a fiduciary capacity for the benefit of the Commission and the Nevada Attorney General.
12. Upon termination of the Monitor's duties under this Monitor Agreement, the Monitor shall promptly return to Renown Health all material provided to the Monitor by Renown Health and shall destroy any material prepared by the Monitor that contains or reflects any confidential information of Renown Health. Nothing herein shall abrogate the Monitor's duty of confidentiality.
13. To the extent that the Monitor wishes to retain any employee, agent, consultant or any other third party to assist the Monitor in accordance with the Orders, the Monitor shall ensure that, prior to being retained, such persons execute a confidentiality agreement in a form agreed upon by the Monitor and Renown Health.
14. Nothing in this Monitor Agreement shall require Renown Health to disclose any material or information that is subject to a legally recognized privilege or that Renown Health is prohibited from disclosing by reason of law or an agreement with a third party.
15. Each party shall be reasonably available to the other to discuss any questions or issues that either party may have concerning compliance with the Orders as they relate to Renown Health.
16. Renown Health hereby confirms its obligation to indemnify the Monitor and hold the Monitor harmless in accordance with and to the extent required by the Orders. Renown Health shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.
17. In the event of a disagreement or dispute between Renown Health and the Monitor concerning Renown Health's obligations under the Orders, and in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the Commission's Compliance Division or the staff of the Nevada Attorney General to resolve this issue.
18. This Monitor Agreement shall be subject to the substantive law of the State of Nevada (regardless of the choice of law principles of Nevada or those of any other jurisdiction).
19. This Monitor Agreement shall terminate when the last obligation under Paragraphs II, III, IV.A.1-4, and V of the Decision and Order and Paragraphs 33, 34, 35(a)-(d), and 36 of the Nevada Order have been fully performed; provided, however, that the Commission and the Nevada Attorney General may extend this Monitor Agreement as may be necessary or appropriate to accomplish the purposes of the Orders.

## Decision and Order

20. In the event that, during the term of this Monitor Agreement, the Monitor becomes aware that he has or may have a conflict of interest that may affect or could have the appearance of affecting the performance by the Monitor of any of his duties under this Monitor Agreement, the Monitor shall promptly inform Renown Health, the Commission, and the Nevada Attorney General of such conflict or potential conflict.
21. In the performance of his functions and duties under this Monitor Agreement, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of his or her own business affairs.
22. It is understood that the Monitor will be serving under this Monitor Agreement as an independent contractor and that the relationship of employer and employee shall not exist between Monitor and Renown Health.
23. This Monitor Agreement is for the sole benefit of the parties hereto and their permitted assigns, the Commission, and the Nevada Attorney General, and nothing herein express or implied shall give or be construed to give any other person any legal or equitable rights hereunder.
24. This Monitor Agreement contains the entire agreement between the parties hereto with respect to the matters described herein and replaces any and all prior agreements or understandings, whether written or oral.
25. Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail, facsimile (with acknowledgment of receipt of such facsimile having been received), or electronic mail, to the applicable party at its address below (or to such other address as to which such party shall hereafter notify the other party):

## If to the Monitor, to:

Judge Charles McGee  
1575 Delucchi Lane, Suite 115-1  
Reno, NV 89502

Telephone: (775) 823-9975  
Facsimile: (775) 823-9973  
Email: [judgemcgee@msn.com](mailto:judgemcgee@msn.com)

## If to Renown Health, to:

Renown Health  
Attention: Kelly Testolin, General Counsel  
1155 Mill Street, Z-7

## Decision and Order

Reno, NV 89502

Telephone: (775) 982-6054  
Facsimile: (775) 982-5754  
Email: [ktestolin@renown.com](mailto:ktestolin@renown.com)

## With copy to:

William Berlin  
Ober Kaler  
1401 H Street, N.W., Suite 500  
Washington, DC. 20005

Telephone: (202) 326-5011  
Facsimile: (202) 408-0640  
Email: [weberlin@ober.com](mailto:weberlin@ober.com)

## If to the Commission, to:

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580  
Attention: Secretary  
Telephone: (202) 326-2514  
Facsimile: (202) 326-2496

## With copy to:

Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001  
Attention: Assistant Director for Compliance  
Telephone: (202) 326-2526  
Facsimile: (202) 326-3396

## If to the Nevada Attorney General, to:

State of Nevada Office of the Attorney General  
Bureau of Consumer Protection  
Attention: Antitrust Unit  
10791 W. Twain Avenue, Suite 100  
Las Vegas, NV 89135  
Telephone: (702) 486-3420  
Facsimile: (702) 486-3283

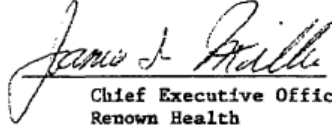
## Decision and Order

26. This Monitor Agreement shall not become binding until it has been approved by the Commission and the Nevada Attorney General.

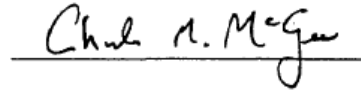
27. This Monitor Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

Renown Health

  
Chief Executive Officer  
Renown Health

MONITOR

  
\_\_\_\_\_

Analysis to Aid Public Comment

**Confidential Appendix B-1**

**[Redacted From the Public Version, But Incorporated By Reference]**

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT**

**I. Overview**

The Federal Trade Commission has accepted an agreement containing two consent orders with Renown Health. The agreement settles charges that Renown Health violated Section 7 of the Clayton Act, 15 U.S.C. § 18, by substantially lessening competition in the market for cardiology services in and around Reno, Nevada, through its acquisition of the two largest cardiology practices in the Reno area and its employment of the cardiologists whose practices it acquired.

The Decision and Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed Decision and Order final. The Order to Suspend, which is final immediately, will remain in force either until the Decision and Order becomes final or the Commission decides not to issue an order.

The purpose of this analysis is to facilitate public comment on the proposed Consent Orders. The analysis is not intended to constitute an official interpretation of the agreement and proposed Consent Orders or to modify their terms in any way. Further, the proposed Consent Orders have been entered into for settlement purposes only and do not constitute an admission by Renown

## Analysis to Aid Public Comment

Health that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

## II. Background and Structure of the Market

Renown Health is based in Reno, Nevada, and operates general acute care hospitals and commercial health plans which serve the Reno area. It is the largest provider of acute care hospital services in northern Nevada.

Prior to the transactions at issue, most of the cardiologists practicing in the Reno area were affiliated with two medical groups which did business under the names Sierra Nevada Cardiology Associates (“SNCA”) and Reno Heart Physicians (“RHP”). Cardiologists are generally internal medicine physicians who specialize in the practice of cardiology, including the provision of non-invasive services (general cardiology), invasive cardiology services (e.g., diagnostic cardiac catheterization), interventional cardiology services (e.g., catheterizations and the placement of stents), and electrophysiology services (e.g., services related to the diagnosis and treatment of heart rhythm conditions). The practices of the SNCA and RHP physicians did not generally include cardiac surgery or pediatric cardiology. Other than the physicians affiliated with SNCA and RHP, there are very few cardiologists practicing adult cardiology in the Reno, Nevada, area.

In late 2010, Renown Health reached agreements to acquire SNCA’s medical practice and to employ the 15 SNCA cardiologists who practiced in the Reno area. Prior to Renown Health’s acquisition of SNCA, it did not employ any cardiologists. With the employment of the SNCA cardiologists, Renown Health competed with RHP in the provision of cardiology services. In March 2011, Renown Health acquired RHP. As part of this acquisition, Renown Health employed the 16 RHP cardiologists who practiced in the Reno area.

Among other terms, the employment agreements between Renown Health and the cardiologists from both SNCA and RHP contain covenants that prohibit the cardiologists from entering into medical practice in competition with Renown Health (“non-compete provisions”). As a result of the acquisitions of the two

## Analysis to Aid Public Comment

medical groups (and the employment of the physicians affiliated with those groups), Renown Health now employs approximately 88% of the physicians providing cardiology services for adults in the Reno area.

### III. The Complaint

The complaint alleges that Renown Health's acquisitions of the two cardiology practices created a highly concentrated market for the provision of cardiology services in the Reno area. According to the complaint, the consolidation of the two competing groups into a single group of cardiologists employed by Renown Health has eliminated competition based on price, quality, and other terms of competition. The consolidation of the two groups into one increased the bargaining power of Renown Health and may lead to higher prices. The complaint further alleges that entry into the market at a scale large enough to form a competitive alternative for health plans is unlikely to be timely or sufficient to deter the likely price increases.

### IV. The Consent Orders

The goal of the Consent Orders in this matter is to restore competition for cardiology services in the Reno area as quickly as possible. The Commission believes that competition is likely to be restored if Renown Health is required to release a certain number of its cardiologist employees from their employment contracts freeing them to practice either as employees of other health care entities or as part of independent medical groups in the Reno area. Renown Health has entered in an Agreement Containing Consent Orders, which includes the Order to Suspend Enforcement of Renown Non-Compete ("Order to Suspend") and the Decision and Order.

#### A. Order to Suspend Enforcement of Renown Non-Compete

The Order to Suspend establishes a period of time during which the former SNCA and RHP cardiologists currently employed by Renown Health in Reno may explore other employment and professional opportunities in the Reno area confidentially, whether as an employee, a member of a medical

## Analysis to Aid Public Comment

group, or in private practice. During this period, Renown Health is prohibited from interfering with the cardiologists' employment discussions and from enforcing the provisions in their employment contracts prohibiting such activities. The purpose of this Order to Suspend is to allow Renown Health's cardiologists to communicate with possible employers without the risk of violating the non-compete provisions in their current employment contracts. In order to facilitate this process, the Order to Suspend requires Renown Health to inform all of its cardiologists through an explanatory letter, as well as copies of the Orders and this Analysis to Aid Public Comment within two days of the Orders being placed on the public record.

The Order to Suspend is effective immediately, i.e., without a public comment period, upon the Agreement Containing Consent Orders being placed on the public record, and operates for at least 30 days while the Commission receives and considers public comment on the Decision and Order. Cardiologists may decide during this period to terminate employment, and may notify the special monitor (who has been appointed) to ensure their inclusion in the group of up to ten cardiologists who will be allowed to leave Renown Health in the event that the Commission issues the Decision and Order. However, nothing in the Order to Suspend requires Renown Health to release any physician from his or her employment agreement until the Decision and Order becomes final.

**B. Decision and Order**

If the Commission issues the final Decision and Order, a second 30-day period ("Release Period") will begin. During this period, cardiologist employees can terminate their employment with Renown without penalty so long as the following conditions are met:

- (1) The cardiologist must submit notice of an intention to terminate employment with Renown Health to the monitor who has been appointed for the purpose of assuring confidentiality;
- (2) The cardiologist must state his or her intention to continue to practice in the Reno area for at least one year;



## Analysis to Aid Public Comment

- (3) The cardiologist must be among the first 10 physicians to submit notice to terminate employment. Renown Health is not required to release more than 10 cardiologists from their employment contracts. To protect the confidentiality of the doctors who want to leave, the monitor will submit to Renown Health no more than the first 10 notices received; and
- (4) The cardiologist may not leave prior to the monitor delivering notice to Renown Health, but must leave employment with Renown Health within 60 days of Renown Health receiving notice from the monitor.

At any time during the Release Period, after the monitor has informed Renown that 10 physicians have met the requirements to terminate without penalty, Renown may request that the Release Period be terminated.

If at the end of this Release Period fewer than six doctors have notified the monitor of their intent to terminate employment, the period in which cardiologists may continue to explore other employment opportunities and leave Renown's employment without penalty will remain open until six cardiologists have terminated their employment with Renown. This provision is included in the Decision and Order to ensure that *at least* six physicians can leave.

Paragraph II describes the basic terms under which cardiologists may terminate their employment with Renown Health. It prohibits Renown from (1) enforcing any non-compete, non-solicitation, or non-interference provisions in their employment agreements, (2) pursuing any breach of contract action for violation of any of these provisions, or (3) taking any retaliatory action against any physician who either leaves under the terms of the Orders or who decides not to leave after exploring other employment as allowed by the Orders.<sup>1</sup> The Order does not,

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<sup>1</sup> The Order does not require that any doctor terminate employment with Renown or work for any other entity. Similarly, it does not require Renown to fire any doctor. It also does not prohibit Renown from negotiating with a doctor to reach a mutual agreement for that physician's employment to be terminated.

## Analysis to Aid Public Comment

however, require Renown to allow cardiologists to terminate their employment agreements in a manner other than that specified in the Decision and Order.

Paragraph III provides for the extension of the period for cardiologists to terminate their employment if at least six cardiologists do not terminate during the initial period.

Paragraph IV includes a number of provisions to ensure that Renown Health will not take any actions to discourage physicians from exploring opportunities to leave or from leaving its employment pursuant to the Decision and Order. In addition, Paragraph IV.A.6 prohibits Renown Health, for a period of three years, from denying, terminating or suspending the medical staff privileges of any physician who leaves Renown Health's employment pursuant to the Consent Orders.

Paragraph V preserves Renown Health's obligation to provide transition services to cardiologists whose employment contracts include such provisions, excluding transitional services relating to negotiating with health plans. Paragraph VI requires Renown Health to give advance notification for future acquisitions affecting this market. Paragraph VII specifies the rules governing the work of the special monitor.

The remaining order provisions are standard reporting requirements to allow the Commission to monitor on-going compliance with the provisions of the Order.

#### **V. Renown Health's Agreement with the Nevada Attorney General**

The State of Nevada, through its Attorney General, worked with the Commission staff in the investigation and resolution of this matter. The Nevada Attorney General filed her own complaint containing allegations similar to those in the Commission's complaint, and Renown Health has entered into a stipulated agreement with the Nevada Attorney General that contains obligations similar to those in the Commission's orders. This agreement is embodied in a document called a Final

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*Analysis to Aid Public Comment*

Judgment, and is subject to court approval. Copies of these documents can be obtained from the Nevada Attorney General's Office.

Complaint

IN THE MATTER OF

**CAREPATROL, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4379; File No. 112 3155**Complaint, December 3, 2012 – Decision, December 3, 2012*

This consent order addresses CarePatrol, Inc.'s statements made in Internet advertising regarding its placement services for seniors requiring long-term care in assisted living facilities and other non-nursing home facilities servicing the frail elderly. The complaint alleges that CarePatrol violated of Section 5(a) of the Federal Trade Commission Act by making the false and unsubstantiated claims: (a) that it monitors or grades the care history and violations of virtually all or a substantial majority of assisted living facilities in a consumer's desired location; (b) that its senior care consultants are located in every state; and (c) that its monitoring or grading of assisted living facilities is based on a review of the facilities' most recent state inspection reports. The consent order prohibits CarePatrol from making false or unsubstantiated representations regarding its placement services.

*Participants*

For the *Commission*: Zachary Hunter and David R. Spiegel.

For the *Respondent*: Chuck Bongiovanni, Chief Executive Officer, *pro se*.

**COMPLAINT**

The Federal Trade Commission, having reason to believe that CarePatrol, Inc. ("CarePatrol" or "respondent") has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is an Arizona corporation with its principal office or place of business at 625 N. Gilbert Rd., Ste. 200, Gilbert, Arizona 85234. Respondent provides its services through 18 franchises located in 12 states.
2. Respondent advertises that its "senior care consultants" offer consumers free assistance in obtaining placements at

## Complaint

assisted living communities and other facilities which provide care for the frail elderly. CarePatrol states that it receives compensation for its placement services from the facilities at which it makes its placements.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

4. There are least 39,000 assisted living facilities in the United States, as well as thousands of smaller, residential care homes which provide assistance and living arrangements for the frail elderly. Many states have one thousand or more such facilities and homes.

5. Respondent has disseminated or has caused the dissemination of promotional materials for its placement services through web-based advertising. *See, e.g.*, Exhibits A through C, attached hereto. CarePatrol’s promotional materials contain the following statements or depictions:

a. **CarePatrol’s Web Site:**

Safe, Pre-Screened, Qualified Providers Fast & Easy

Families usually do not start their search in hopes to find the assisted living or independent living community with:

- **The most citations or violations**
- **The worst care history or**
- **The highest staff turnover**

But that is **exactly what can happen** when you request a list of assisted living options from other assisted living websites. **You Deserve Qualified, Safe Choices!**

That’s why CarePatrol’s local, Nationally Certified Advisors **look beyond the chandeliers and fancy**

## Complaint

**lobbies** to monitor each community's care history and state violations so we can recommend:

## The Safest Options For Your Loved One

\*\*\*

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\*\*\*

\*\*\*

**Pre-Approved Options**

Whether the choice is in-home care, an assisted living community, adult family home, nursing home or a retirement community, your Senior Care Consultant keeps safety and comfort in mind. You receive only the best, prescreened options for care, based on your desired location, needs and affordability. **Only about 30% of all care options meet our high standards.**

**Viewing Your Options**

After completing an assessment, your **Senior Care Consultant will coordinate or accompany you on a tour** of our prescreened providers that's tailored to your needs. Until your senior living decision is made, we are with you every step of the way to provide local, expert counsel, guidance, and reassurance.

Exh. A

b. **CarePatrol's Web Site:**

**You Have Choices...**

**We Have Their Grades**

You can spend your time on the Internet **SEARCHING** for Assisted Living options for your loved one and **find pretty pictures and fluffy descriptions** of care facilities near you..... **Does that Help You Find A Safe, Quality Care Facility?**

At CarePatrol, We Don't Just Send You a List of Facilities Like Everyone Else Does. We Grade Each and Every Facility From "A" to "F" Based On Their

## Complaint

Last State Survey. Our Local Senior Care Consultants also Pre-Screen every home we recommend

Exh. B

c. **CarePatrol's Web Site:**

**Click Below to Meet our Consultants**

[Alabama](#) [Iowa](#) [Nevada](#) [South Dakota](#)  
[Alaska](#) [Kansas](#) [New Hampshire](#) [Tennessee](#)  
[Arizona](#) [Kentucky](#) [New Jersey](#) [Texas](#)  
[Arkansas](#) [Louisiana](#) [New Mexico](#) [Utah](#)  
[California](#) [Maine](#) [New York](#) [Vermont](#)  
[Colorado](#) [Maryland](#) [North Carolina](#) [Virginia](#)  
[Connecticut](#) [Massachusetts](#) [North Dakota](#) [Washington](#)  
[Delaware](#) [Michigan](#) [Ohio](#) [West Virginia](#)  
[Florida](#) [Minnesota](#) [Oklahoma](#) [Wisconsin](#)  
[Georgia](#) [Mississippi](#) [Oregon](#) [Wyoming](#)  
[Hawaii](#) [Missouri](#) [Pennsylvania](#)  
[Idaho](#) [Montana](#) [Rhode Island](#)  
[Illinois](#) [Nebraska](#) [South Carolina](#)  
[Indiana](#)

Exh. C

6. Through the means described in Paragraph 5, CarePatrol has made representations, expressly or by implication that:

- a. It monitors or grades the care history and violations of virtually all, or a substantial majority, of all assisted living facilities in a consumer's desired location (Exhs. A through C);
- b. It provides services through a network of senior care consultants who are located in every state (Exh. C); and

## Complaint

- c. It monitors or grades assisted living facilities based on a review of the facilities' latest state inspection reports (Exh. B).

## 7. In truth and in fact:

- a. CarePatrol does not monitor or grade the care history and violations of virtually all, or a substantial majority, of assisted living facilities in a consumer's desired location. In most states listed on CarePatrol's website, it has not monitored or graded any facilities;
- b. CarePatrol does not provide its services through a network of senior care consultants who are located in every state; and
- c. In numerous instances, CarePatrol does not monitor or grade assisted living facilities based on a review of the facilities' most recent state inspection reports.

Therefore, the representations set forth in Paragraph 6 are false or misleading.

8. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 6, at the time the representations were made.

9. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 6 at the time the representations were made. Therefore, the representation set forth in Paragraph 8 is false or misleading.

10. Respondent's practices, as alleged in this complaint, constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

**THEREFORE**, the Federal Trade Commission, this third day of December, 2012, has issued this complaint against respondent.

By the Commission.






Complaint


Exhibit A




Find Assisted Living|Independent Living|Senior Housing|Nursing Home

Page 1 of 2

CarePatrol  A FREE COMMUNITY SERVICE  Speak With A Senior Care Consultant **877-654-0344**  CALL  
DAYS | EVENINGS | WEEKENDS

*Helping More Families Make Smarter Choices*



FEATURED NATIONALLY ON  
  

### Safe, Pre-Screened, Qualified Providers Fast & Easy!


Families usually do not start their search in hopes to find the assisted living or independent living community with:

- The most citations or violations
- The worst care history or
- The highest staff turnover

But that is exactly what can happen when you request a list of assisted living options from other assisted living websites. You Deserve Qualified, Safe Choices!

That's why CarePatrol's local, Nationally Certified Advisors look beyond the chandeliers and fancy lobbies to monitor each community's care history and state violations so we can recommend:

**The Safest Options For Your Loved One**

 **Verified**  
Trusted  
Verify  
ABOUT YOUR CHOICE

**Start Your Search**

#### Popular Searches

- [Albuquerque Assisted Living](#)
- [Birmingham Assisted Living](#)
- [Charlotte NC Assisted Living](#)
- [Connecticut Assisted Living](#)
- [Dallas Assisted Living](#)
- [Denver Assisted Living](#)
- [Detroit Assisted Living](#)
- [Houston Assisted Living](#)
- [Milwaukee Assisted Living](#)
- [New Jersey Assisted Living](#)
- [New York Assisted Living](#)
- [Phoenix Assisted Living](#)
- [Pittsburgh Assisted Living](#)
- [Portland Assisted Living](#)
- [Seattle Assisted Living](#)
- [St. Louis Assisted Living](#)
- [Tucson Assisted Living](#)
- [West Virginia Assisted Living](#)

#### STEPS IN FINDING QUALITY CARE

**Your Care Needs Identified**

**1** Your Senior Care Consultant's top priority is to **alleviate your stress** through personalized attention and knowledge. To assess your needs we'll meet you wherever and whenever it matters most: at the doctor's office, hospital, a skilled nursing facility or an existing residence or **if you feel more comfortable, we can speak with you over the telephone.**

**Pre-Approved Options**

**2** Whether the choice is in-home care, an assisted living community, adult family home, nursing home or a retirement community, your Senior Care Consultant keeps safety and comfort in mind. You receive only the best, prescreened options for care based on your desired location, needs and affordability. **Only about 30% of all care options meet our high standards**

**Viewing Your Options**

**3** After completing an assessment, your **Senior Care Consultant will coordinate or accompany you on a tour** of our prescreened providers that's tailored to your needs. Until your senior living decision is made, we are with you every step of the way to provide local, expert counsel, guidance and reassurance.

**Start Your Search**

Exhibit A

Complaint

Exhibit B

Search For Assisted Living

Page 1 of 1



Speak To A Senior Care Consultant  
**877-654-0344**  
DAYS | EVENINGS | WEEKENDS



**A FREE COMMUNITY SERVICE**

Home CareCheck Our Services Resources Meet Our Consultants Corporate Office

Home > Services > Search For Care > Search For Assisted Living > Search For In Home Care > Search For A Nursing

**You Have Choices....  
We Have Their Grades.**

You can spend your time on the Internet **SEARCHING** for Assisted Living options for your loved one and find pretty pictures and fluffy descriptions of care facilities near you.....**Does That Help You Find A Safe, Quality Care Facility?**

At CarePatrol, We Don't Just Send You a List of Facilities Like Everyone Else Does. We Grade Each and Every Facility From "A" to "F" Based On Their Last State Survey. Our Local Senior Care Consultants also Pro-Screen every home we recommend

**We take the time to:**

Speak to you directly to find out in detail about your loved one's care needs so we can "match" them to appropriate facilities that meet their medical, social, physical, financial and location considerations.

Arrange to personally tour you to our recommended care options in your area. Let us drive and answer your questions while you concentrate on making the best choice for your family.

We will follow up with you to make sure that your loved one's needs are being met and assist you in case his or her care needs change.

**Our Services Are FREE OF CHARGE.**

We are paid by our thousands of pre-screened providers across the country

Please complete the form below and one of our Senior Care Consultants will contact you shortly to assist you and your family **FREE OF CHARGE**

**Need Assisted Living Near:**

\*City:

\*State:

\*Zip Code:

Your First Name:

Your Last Name:

Your Email Address:

Your Phone Number:



**To Speak With A Senior Care Consultant In Your Area,  
Please Call 877-654-0344**

Complaint

Exhibit C

Meet Our Consultants

Page 1 of 1



Speak To A Senior Care Consultant  
877-654-0344  
DAYS | EVENINGS | WEEKENDS



**"Helping Families Make Safer Choices" A FREE COMMUNITY SERVICE**

Home Our Services Resources Meet Our Consultants Corporate Office

Click Below To Meet Our Consultants

<a href="#">Alabama</a>	<a href="#">Iowa</a>	<a href="#">Nevada</a>	<a href="#">South Dakota</a>
<a href="#">Alaska</a>	<a href="#">Kansas</a>	<a href="#">New Hampshire</a>	<a href="#">Tennessee</a>
<a href="#">Arizona</a>	<a href="#">Kentucky</a>	<a href="#">New Jersey</a>	<a href="#">Texas</a>
<a href="#">Arkansas</a>	<a href="#">Louisiana</a>	<a href="#">New Mexico</a>	<a href="#">Utah</a>
<a href="#">California</a>	<a href="#">Maine</a>	<a href="#">New York</a>	<a href="#">Vermont</a>
<a href="#">Colorado</a>	<a href="#">Maryland</a>	<a href="#">North Carolina</a>	<a href="#">Virginia</a>
<a href="#">Connecticut</a>	<a href="#">Massachusetts</a>	<a href="#">North Dakota</a>	<a href="#">Washington</a>
<a href="#">Delaware</a>	<a href="#">Michigan</a>	<a href="#">Ohio</a>	<a href="#">West Virginia</a>
<a href="#">Florida</a>	<a href="#">Minnesota</a>	<a href="#">Oklahoma</a>	<a href="#">Wisconsin</a>
<a href="#">Georgia</a>	<a href="#">Mississippi</a>	<a href="#">Oregon</a>	<a href="#">Wyoming</a>
<a href="#">Hawaii</a>	<a href="#">Missouri</a>	<a href="#">Pennsylvania</a>	
<a href="#">Idaho</a>	<a href="#">Montana</a>	<a href="#">Rhode Island</a>	
<a href="#">Illinois</a>	<a href="#">Nebraska</a>	<a href="#">South Carolina</a>	
<a href="#">Indiana</a>			



CarePatrol Franchise Systems, LLC 625 N Gilbert Rd Suite 200, Gilbert, Arizona 85234

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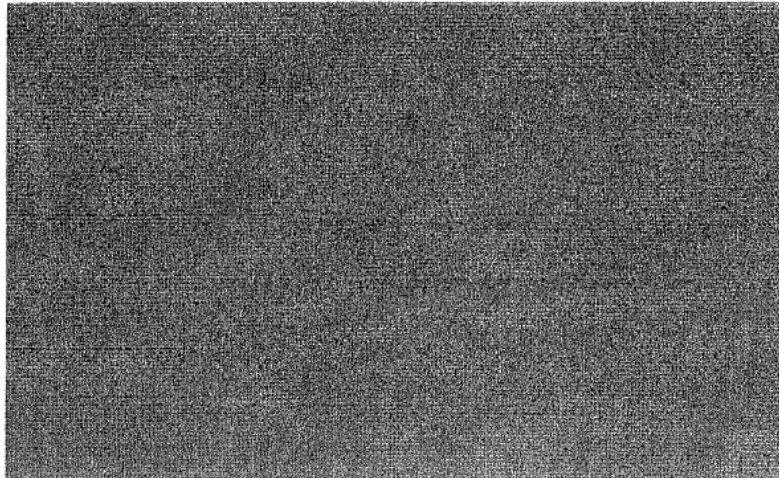


Exhibit C

## Decision and Order

**DECISION AND ORDER**

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent CarePatrol is an Arizona corporation with its principal office or place of business at 625 N. Gilbert Rd., Ste. 200, Gilbert, Arizona 85234.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## Decision and Order

**ORDER****DEFINITIONS**

For purposes of this order, the following definitions shall apply:

- A. Unless otherwise specified, “respondent” shall mean CarePatrol, Inc., its successors and assigns, and its officers, agents, representatives, and employees.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- C. “Covered service” shall mean any service involving placements in an assisted living facility.
- D. “Assisted living facility,” or “ALF” shall mean any congregate residential setting, which provides housing for persons sixty (60) years or older, as well as assistance in activities of daily living (e.g., bathing and dressing) and medication administration. The definition includes residential care facilities for the elderly (“RCFEs”), as well as any other facilities which perform the functions of ALFs or RCFEs, but excludes facilities which a state has licensed as skilled nursing facilities.
- E. “State survey” shall mean a state inspection report for an assisted living facility which describes or evaluates the facility’s performance, including any violations of applicable state statutes and regulations.

**I. Prohibited Misrepresentations; Substantiation**

- A. **IT IS ORDERED** that respondent, directly or through any corporation, subsidiary, division, franchisee, or other device, in connection with the advertising, promotion, offering for sale, or sale of any covered service in or affecting commerce, shall not represent in any manner, directly or indirectly, expressly or by implication, that:

## Decision and Order

1. It or its franchisees monitor or evaluate the care history or state violations of any number, portion, or percentage of assisted living facilities in a consumer's desired location;
2. It or its franchisees provide their services through officers, agents, employees, and/or contractors who are located in any geographic area of the United States; or
3. It or its franchisees evaluate assisted living facilities based on a review of information, including state surveys, or any other records detailing the performances of these facilities,

unless the representation is non-misleading and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that, when considered in light of the entire body of relevant evidence, substantiates that the representation is true.

*Provided, however,*<sup>2</sup> that any permitted claim in connection with Part I.A.3, above, shall be based on the most recent inspection record of an assisted living facility.

- B. **IT IS FURTHER ORDERED** that respondent, directly or through any corporation, subsidiary, division, franchisee or other device, in connection with the advertising, promotion, offering for sale, or sale of any covered service in or affecting commerce, shall not make any representation about its placement services in any manner, directly or indirectly, expressly or by implication, unless the representation is non-misleading and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that, when considered in light of the entire body of relevant evidence, substantiates that the representation is true.

## Decision and Order

**II. Records**

**IT IS FURTHER ORDERED** that respondent CarePatrol, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

**III. Acknowledgments**

**IT IS FURTHER ORDERED** that respondent CarePatrol, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, members, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent CarePatrol, Inc., and its successors and assigns shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

## Decision and Order

**IV. Notices**

**IT IS FURTHER ORDERED** that respondent CarePatrol, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation or any business entity that it directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this order, including the formation of a new business entity; a dissolution, assignment, sale, merger or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to [Debrief@ftc.gov](mailto:Debrief@ftc.gov) or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "CarePatrol, Inc., File No. 1123155."

**V. Reports**

**IT IS FURTHER ORDERED** that respondent CarePatrol, Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports.

**VI. Sunset**

This order will terminate on December 3, 2032, or twenty (20) years from the most recent date that the United States or the



## Analysis to Aid Public Comment

Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part of this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

*Provided, further*, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

### **ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order from CarePatrol, Inc. ("CarePatrol" or "respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will

## Analysis to Aid Public Comment

decide whether it should withdraw from the agreement or make the proposed order final.

The matter involves certain statements CarePatrol has made in Internet advertising regarding its placement services for seniors requiring long term care in assisted living facilities (“ALFs”) and other non-nursing home facilities servicing the frail elderly. According to the Commission’s complaint, CarePatrol made the following false and unsubstantiated claims: (a) that it monitors or grades the care history and violations of virtually all or a substantial majority of ALFs in a consumer’s desired location; (b) that its senior care consultants are located in every state; and (c) that its monitoring or grading of assisted living facilities is based on a review of the facilities’ most recent state inspection reports. Thus, the complaint states that CarePatrol has engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed order contains four provisions designed to prevent CarePatrol, or other persons who are in active concert or participation with it, from engaging in similar acts and practices in the future. Part I.A.1 of the proposed order prohibits respondent from misrepresenting, or making unsubstantiated representations, that it has monitored or evaluated a number, portion, or percentage of the assisted living facilities in a consumer’s desired location.

Part I.A.2 prohibits CarePatrol from misrepresenting or making unsubstantiated representations that it or its franchisees provide placement services through a network of officers, agents, employees and contractors who are located in any geographic region.

Part I.A.3 prohibits CarePatrol from claiming that its monitoring or grading of assisted living facilities is based on a review of information contained in state inspection reports, or any other records detailing the performance of assisted living facilities, unless the claim is non-misleading and based on competent and reliable evidence. It also requires such claims to be based upon the most recent inspection reports.

Finally, Part I.B prohibits CarePatrol from making false or unsubstantiated representations regarding its placement services.

*Analysis to Aid Public Comment*

Parts II through V of the proposed order require CarePatrol to: keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having supervisory responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VI provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

**ABCSP, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4378; File No. 112 3168**Complaint, December 3, 2012 – Decision, December 3, 2012*

This consent order addresses ABCSP, Inc.'s statements made in Internet advertising regarding its placement services for seniors requiring long-term care in assisted living facilities and other non-nursing home facilities servicing the frail elderly. The complaint alleges that ABC violated of Section 5(a) of the Federal Trade Commission Act by making false and unsubstantiated claims that it, or its care coordinators, view or evaluate virtually all or a substantial majority of such facilities in every geographic region of the United States. The consent order prohibits ABC from making any false or unsubstantiated representations regarding its placement services.

*Participants*

For the *Commission*: Zachary Hunter and David R. Spiegel.

For the *Respondent*: Carl Zwisler, Gray, Plant, and Mooty.

**COMPLAINT**

The Federal Trade Commission, having reason to believe that ABCSP, Inc. ("ABC," or "respondent") has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a California corporation with its principal office or place of business at 1406 Blue Oaks Blvd., Ste. 100, Roseville, CA 95747. Respondent does business under its own name as well as the name, "Always Best Care." Respondent provides its services through a network of franchisees located throughout the United States.

2. Respondent advertises that its locally-based "care coordinators" offer consumers free assistance in obtaining placements at assisted living communities, residential care homes, and other facilities which provide care for the frail elderly. ABC

## Complaint

states that it receives compensation for its placement services from the facilities at which it makes its placements.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

4. There are least 39,000 assisted living facilities in the United States, as well as thousands of smaller, residential care homes which provide assistance and living arrangements for the frail elderly. In many of the geographic areas in which ABC’s franchisees operate, there are at least one thousand such facilities and homes.

5. ABC’s training manual for new franchisees recommends that they sign contracts with at least 35 to 40 such facilities before opening for business. ABC typically does not know the identity of the assisted living facilities and residential care homes with which its franchisees have contracts.

6. Respondent has disseminated or has caused the dissemination of promotional materials for its placement services through web-based advertisements. *See, e.g.*, Exhibits A through C, attached hereto. ABC’s promotional materials contain the following statements or depictions:

a. **ABC’s Web Site:**

To help guide you through the maze of assisted living communities, independent communities and residential care homes, Always Best Care visits or evaluates most every facility in our markets. If you need help selecting assisted living facilities that are ideal for your loved ones, let us provide our expertise.

Exh. A.

b. **ABC’s Web Site:**

With our free assisted living placement program, we match our clients with the top three or four most

## Complaint

appropriate living options based upon individual needs, custom screening, and available budgets.

....

Understanding what community is right for your loved one can be a daunting task. Always Best Care helps seniors and their families through the entire process. Our Care Coordinators are local and have personally viewed virtually all of the assisted living communities in your area. Contact your Always Best Care representative today.

Exh. B.

**c. ABC's Web Site:**

Our Care Coordinators are local and have personally viewed most RCFE [Residential Care Facility for Elderly] homes in your area.

Exh. C.

7. Through the means described in Paragraph 6, ABC has represented, expressly or by implication, that its placement recommendations for assisted living facilities and residential care homes in different geographic regions are based on the personal knowledge of its personnel or agents regarding virtually all, or a substantial majority, of such facilities in these geographic regions.

8. In truth and in fact, in numerous geographic regions of the United States, ABC's placement recommendations for assisted living facilities and residential care homes are not based on the personal knowledge of its personnel or agents of virtually all, or a substantial majority, of the facilities in that geographic region. Therefore, the representation set forth in Paragraph 7 is false or misleading.

9. Through the means described in Paragraph 6, respondent has represented, expressly or by implication, that it possessed and

## Complaint

relied upon a reasonable basis that substantiated the representation set forth in Paragraph 7, at the time the representation was made.

10. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representation set forth in Paragraph 7, at the time the representation was made. Therefore, the representation set forth in Paragraph 9 is false or misleading.

11. Respondent's practices, as alleged in this complaint, constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

**THEREFORE**, the Federal Trade Commission, this third day of December, 2012, has issued this complaint against respondent.

By the Commission.

Complaint

Exhibit A

Always Best Care : Exceptional Senior Care : In Home Care : Assisted Living Communit... Page 2 of 3

The screenshot shows the top portion of the Always Best Care website. On the left is a map of the United States with state boundaries. Below the map is a search bar with 'State' and 'City' dropdown menus. To the right of the map is a testimonial video player with a 'PLAY VIDEO' button. Further right is an advertisement for 'RxCard' from 'The RxCard Pharmacy' with a list of benefits: 'NO co-payments', 'NO deductibles', 'NO copays', 'NO out-of-pocket maximums', 'NO restrictions on quantity', 'NO restrictions on refills', and 'NO restrictions on brands'. The website URL 'www.AlwaysBestCare.com' is visible at the bottom of the ad.

Click here to learn more about in-home care, senior care, assisted living placement services and skilled home health care.

**The Best In Professional and Compassionate Senior Care Services**

If you're in need of in-home care (also known as senior care or elderly care) or other related services, Always Best Care Senior Services can help. Our array of services allows you to find the ideal solution for your senior care needs. With a commitment to exceeding your expectations, we strive to deliver the optimum care for our clients. Our care experts will work for your loved ones to ensure they receive the care and attention they deserve. When only the best will do, Always Best Care is here for you. Always Best Care offers senior care services such as:

- **Home Care** - In-home care services tailored to your needs. Our team of home care experts guarantees your loved ones need on the high level of care they deserve. At Always Best Care, you'll find only the best agencies trained to help seniors and, very knowledgeable in the senior care industry.
- **Assisted Living Placements** - To help guide you through the maze of assisted living communities, independent communities and residential care homes, Always Best Care visits or evaluates most every facility in our markets. If you need help selecting assisted living facilities that are ideal for your loved one, let us provide our expertise.
- **Alzheimer's & Dementia Care** - Specialized home care and senior care services that provide your loved ones the Alzheimer's care and other dementia care they require.
- **Skilled Nursing** - Our team of experienced registered nurses can provide critical care for seniors that prefer to stay in their home, but require a higher level of skilled care. Our skilled home health care services are available in select locations - call your local Always Best Care office to determine if these services are available in your area.

With unparalleled professionalism and exceptional care, you can count on Always Best Care Senior Services to assist with your elderly care needs.

**Home Care Agencies**

Our home care agencies have served more than 25,000 seniors across the USA and Canada.

Our home care providers can offer assistance with:

- Meal Preparation
- Medication Management
- Dressing
- Bathing
- Cleaning the Bathrooms
- Medication Reminders
- Mobility
- Mail Bills and Letters
- Groceries
- Answer the Door and Phone
- And Much More

Do you need to determine which assisted living facility is right for your loved one? Let Always Best Care help you in your search. Our team is experienced in assisted living placements and we can provide the expertise you need in selecting the best community. Always Best Care can help you:

- Research potential assisted living facilities
- Make arrangements to tour assisted living communities with you
- Assess the facility's ability to meet the needs of your loved one
- Skilled Nursing Care You Can Trust

When available, our skilled nursing care is second to none. Always Best Care provides skilled home health care to assist with:

- Blood Drawn
- Catheter Maintenance
- Chronic Disease Management
- IV Therapy
- Injections
- Healthy Living Education
- Medication Management
- New Diagnostic Education
- Pain Management
- Post Surgery Care
- Restorative Care
- And More

When you're searching for in-home care, we make it easy to find the home care agencies and skilled home health care agencies that operate in the area in which you need assistance. From elderly care to dementia care and many other senior care services, we're here to simplify your search for the care you need. Let us help in your search for assisted living facilities or any other elderly care needs you may have. Let Always Best Care help you secure the best senior care services in your area.

**We Assist In Evaluating Financial, Physical, & Special Needs So You Find The Ideal Care Solution**

Exhibit A



Complaint

Exhibit B

Free Senior Housing Placement Services : Assisted Living Facilities : Dementia Care : Alzheimer's Care : ... Page 1 of 1

**Always BEST CARE SENIOR SERVICES**

For a free care consultation, call toll-free 1-855-470-CARE **FREE Care Card**

Home Care | Assisted Living | Alzheimer's / Dementia | Skilled Nursing | Careers

**FREE SENIOR HOUSING PLACEMENT SERVICES**

Since 1996, Always Best Care Senior Services has been changing the way people think about senior living. We take pride in helping seniors enjoy fulfilling lives. Our experience and commitment to serving seniors has fostered independence and promote individuality. We provide the best choices to our clients while maintaining the highest standards for living arrangements. We work directly with medical professionals, care coordinators, families and their families to ensure that wherever our client chooses to live, they continue to receive the highest level of care, dignity, and respect. With our free assisted living placement program, we match our clients with the top three or four most appropriate living options based upon individual needs, custom screening and available budgets. Then, we personally take our clients and their families on a tour of the matched assisted living communities, residential care homes, Alzheimer's and dementia care communities or retirement communities so they can decide which senior housing option is best for them. Best of all, the services we provide are paid by the community selected.

Understanding what community is right for your loved one can be a daunting task. Always Best Care helps seniors and their families through the entire process. Our Care Coordinators are local and have personally viewed virtually all of assisted living communities in your area. Contact your local Always Best Care representative today for your free no-obligation consultation.

[Contact Us](#)

*Each office is independently owned and operated*

Home | Feature Articles | Emergency Response | In the News | Franchise Opportunities | About Us | Contact Us | Sitemap | Privacy Policy [Login](#)

Exhibit B

Complaint

Exhibit C

Residential Care Homes for Elderly RCHE : 24 Hour Health Services : Assisted Living : Home Care for S... Page 1 of 2

**Always BEST CARE SENIOR SERVICES**

Complimentary Care Consultation Request

How Can We Help You 8

In-Home Care Services | Find Senior Housing | Alzheimer's Care | Emergency Response System | Become a Care Provider | About Us

*Residential Care Homes for the Elderly*

### What is a Residential Care Home or Board and Care Home for the Elderly (RCFE)?

A residential care home for seniors or RCHE is typically a home like yours or mine that has been converted to a care home and is licensed by the state to take care of seniors. Most RCHE's are set-up to provide care to 6 seniors; however they can be smaller or larger in size. RCHE homes were the first widely recognized form of assisted living, and as such, they provide similar care but typically not as much social interaction. Residents of a RCHE Home have a private or shared room and may have private or shared bathrooms. The rooms usually do not include a kitchen, since providing meals is a major function of the home. RCHE homes generally have some common areas for socializing which include a dining area and one or more other rooms that are mainly for informal contact.

Some but not all of the key Characteristics of RCHE home are;

- Activities of Daily Living (dressing, personal care, bathing, incontinence care)
- Meals served (usually communal style)
- 24-hour supervision (around the clock staff but not necessary Awake staff)
- Community Services (laundry, cleaning, etc.)
- Health Services (medications management and dispensing, diabetes care)
- Overall Health (physical, emotional)

As with any type of senior community understanding what community is right for your loved one can be a daunting task. For over a decade Always Best Care has been helping our seniors through this process. Let Always Best Care guide you through the health care maze. Our Care Coordinators are local and have personally viewed most RCHE homes in your area. Call Always Best Care today for your free no obligation consultation or visit us at [www.alwaysbestcare.com](http://www.alwaysbestcare.com) to find the office nearest you.

To learn more about "what is residential care home for seniors" click here.

Each Always Best Care Senior Services Franchise is Independently Owned and Operated

Home | In-Home Care Services | Find Senior Housing | Alzheimer's Care | Emergency Response System | Become a Care Provider | About Us | Complimentary Care Consultation | Request Information

Always Best Care Franchise | Assisted Living For Seniors | Assisted Living Placement | Preventing Caregiver Burnout | Residential Senior Services Franchise | Senior Care Franchise Business | Senior Homecare | Starting Senior Care Business | Homecare

Exhibit C

## Decision and Order

**DECISION AND ORDER**

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of a Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from an interested person pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent ABC is a California corporation with its principal office or place of business at 406 Blue Oaks Blvd., Ste. 100, Roseville, CA 95747.

## Decision and Order

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

**ORDER****DEFINITIONS**

For purposes of this order, the following definitions shall apply:

- A. Unless otherwise specified, respondent shall mean ABCSP, Inc., its successors and assigns, and its officers, agents, representatives, and employees.
- B. Commerce shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.
- C. Covered service shall mean any service involving placements in an assisted living facility.
- D. Assisted living facility, or ALF shall mean any congregate residential setting, which provides housing for persons 60 years or older, as well as assistance in activities of daily living (e.g., bathing and dressing) and medication administration. The definition includes residential care facilities for the elderly (RCFEs), as well as any other facilities which perform the functions of ALFs or RCFEs, but excludes facilities which a state has licensed as skilled nursing facilities.

**I. Prohibited Misrepresentations; Substantiation**

- A. **IT IS ORDERED** that respondent or other persons who are in active concert or participation with them, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any covered service in or affecting commerce, shall not represent in any manner, directly or indirectly, expressly or by implication, that its personnel or agents

## Decision and Order

personally view, inspect, or monitor assisted living facilities, including representations regarding the viewing, inspecting, or monitoring of any number, portion, or percentage of assisted living facilities in a geographic region, unless the representation is non-misleading and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that, when considered in light of the entire body of relevant evidence, substantiates that the representation is true.

- B. **IT IS FURTHER ORDERED** that respondent, or other persons who are in active concert or participation with them, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any covered service in or affecting commerce, shall not make any representation about its placement services in any manner, directly or indirectly, expressly or by implication, unless the representation is non-misleading and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that, when considered in light of the entire body of relevant evidence, substantiates that the representation is true.

## II. Records

**IT IS FURTHER ORDERED** that respondent ABCSP, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict,

## Decision and Order

qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

### III. Acknowledgments

**IT IS FURTHER ORDERED** that respondent ABCSP, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, members, officers, directors, and managers, and to all current and future employees, agents, and representatives having decision-making authority with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent ABCSP, Inc., and its successors and assigns shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

### IV. Notices

**IT IS FURTHER ORDERED** that respondent ABCSP, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation or any business entity that it directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this order, including the formation of a new business entity; a dissolution, assignment, sale, merger or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

## Decision and Order

Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to [Debrief@ftc.gov](mailto:Debrief@ftc.gov) or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: ABCSP, Inc., File No. 1123168.

**V. Reports**

**IT IS FURTHER ORDERED** that respondent ABCSP, Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports.

**VI. Sunset**

This order will terminate on December 3, 2032, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part of this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

*Provided, further*, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order

## Analysis to Aid Public Comment

will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC  
COMMENT**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from ABCSP, Inc. (“ABC” or “respondent”)

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The matter involves certain statements ABC has made in Internet advertising regarding its placement services for seniors requiring long term care in assisted living facilities (“ALFs”) and other non-nursing home facilities servicing the frail elderly. According to the Commission’s complaint, ABC made false and unsubstantiated claims that it, or its care coordinators, view or evaluate virtually all or a substantial majority of such facilities in every geographic region of the United States. Thus, the complaint states that ABC has engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed order contains two provisions designed to prevent ABC, or other persons who are in active concert or participation with it, from engaging in similar acts and practices in the future. Part I.A prohibits respondent from misrepresenting or making unsubstantiated representations that it, or its agents,



Analysis to Aid Public Comment

personally view, inspect, or monitor assisted living facilities, including representations that it personally views, inspects, or monitors any particular number, portion, or percentage of ALFs in a geographic region.

Part I.B prohibits ABC from making any false or unsubstantiated representations regarding its placement services.

Parts II through V require ABC to: keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having supervisory responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VI provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

**READING HEALTH SYSTEM  
AND  
SURGICAL INSTITUTE OF READING**COMPLAINT AND ORDER IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND  
SECTION 7 OF THE CLAYTON ACT*Docket No. 9353; File No. 121 0155  
Complaint, November 16, 2012 – Decision, December 7, 2012*

This case addresses the \$43 million acquisition by Reading Health System of Surgical Institute of Reading. The complaint alleges that the acquisition, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by significantly reducing competition in the markets for inpatient orthopedic/spine surgery; outpatient orthopedic/spine surgery; outpatient general surgery; and outpatient ear, nose, and throat (“ENT”) surgery in the Reading, Pennsylvania area. The order dismisses the Administrative Complaint without prejudice because Respondents abandoned the proposed acquisition and the Commission is not reaching a decision on the merits.

*Participants*

For the *Commission*: Maggie DiMoscato, Janelle Filson, Kevin Hahm, Douglas Litvack, Jeremy Morrison, Paul Nolan, Sean Pugh and Stephanie Reynolds.

For the *Respondents*: Joanne M. Judge, Neil Schur, and Joseph Wolfson, Stevens & Lee; Jeffrey Brennan, McDermott, Will & Emery.

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Reading Health System (“RHS”) and Surgical Institute of Reading (“SIR”), having executed an asset purchase agreement in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, and which if consummated would violate Section 7 of the Clayton Act, as

## Complaint

amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), stating its charges as follows:

**I.****NATURE OF THE CASE**

1. RHS's acquisition of SIR (the "Acquisition") will substantially lessen competition for critical surgical services in the Reading, Pennsylvania area, leading to increased healthcare costs for local residents and reduced quality of care. SIR, a surgical specialty hospital, opened in 2007 and immediately challenged RHS's dominance in the Reading area. Specifically, by offering lower rates to health plans and higher quality to patients and physicians, SIR has drawn away significant volumes of commercially-insured patients in important surgical service lines from RHS. For its part, RHS did not take this new competitive threat lying down; it chose to compete head-to-head with SIR by offering to lower its rates and aggressively seeking to improve its quality to attract patients back to its facilities from SIR. As evidenced by their competitive interactions, SIR considered RHS to be its "primary competitor" and RHS, in turn, described SIR as its "nemesis." Not surprisingly, then, in high-level, internal communications, RHS described the Acquisition as a "defensive and offensive" strategy designed to "protect the hospital's market share." If the Acquisition proceeds, these benefits of the head-to-head competition between RHS and SIR described above – lower costs and quality improvements – will vanish.

2. One of RHS's principal motivations in acquiring SIR is to protect its market share. Ordinary-course-of-business documents reveal that RHS was concerned by "notable losses in surgical volumes" to SIR. Executives were alarmed that market shares in key surgical service lines were "not a pretty picture with SIR in the mix" and that patients were "choosing to go to SIR" over RHS. RHS responded vigorously to SIR's competitive threat by offering reimbursement rate discounts to health plans in exchange for the plans' agreement to exclude SIR from their provider

## Complaint

networks. It also planned to “improve [its] services so that patients will want to come to [RHS]” instead of SIR. This competitive rivalry – which would be eliminated by the Acquisition – has produced substantial benefits for local employers and patients in Reading.

3. Notably, most health plans declined RHS’s discount offers, which were contingent on excluding SIR from their provider networks. SIR contracted with health plans at significantly lower rates than RHS and successfully attracted patients from RHS because of its lower prices, high quality, and convenience. Rate increases impose a significant burden on local employers and employees, either directly or indirectly through higher health insurance premiums, co-pays, and other out-of-pocket healthcare expenses. Higher costs, in turn, force employers to reduce or eliminate health insurance coverage for their employees, or take other cost-cutting measures, such as reducing wages. These effects are not purely financial; increases in already-high healthcare costs ultimately force individuals to drop their health insurance, and even those that maintain insurance may delay or forgo medical care that they cannot afford.

4. The Acquisition threatens competitive harm in four relevant markets where RHS and SIR compete to offer services to commercially-insured patients: (1) inpatient orthopedic surgical services; (2) outpatient orthopedic surgical services; (3) outpatient ear, nose, and throat (“ENT”) surgical services; and (4) outpatient general surgical services. The relevant geographic market in which to analyze the effects of the Acquisition for each relevant service market is the area corresponding to Reading Hospital’s primary service area.

5. The Acquisition reduces the number of significant competitors from three to two – a virtual duopoly – for the inpatient orthopedic surgical services market, with St. Joseph Medical Center (“St. Joseph”) as the only other meaningful competitor in the Reading area. The markets for outpatient general surgical services and outpatient ENT surgical services would each also be left with only one other significant competitor. In the fourth relevant market, outpatient orthopedic surgical services, the Acquisition reduces the number of significant competitors from four to three.

## Complaint

6. The Acquisition is presumptively unlawful in each of the four affected markets under the relevant case law and the U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (“Merger Guidelines”). Post-Acquisition market shares in each of the four relevant markets are extraordinarily high, ranging from 49 percent to 71 percent, with correspondingly high concentration levels.

7. Health plans with members in the Reading area believe that the Acquisition will increase RHS’s already immense bargaining leverage, subjecting their members to higher rates. For some health plans, an increase in SIR’s rates to those of RHS equates to a \_\_\_\_\_, and thousands more dollars in out-of-pocket costs for many individual patients. For example, for one local health plan’s members, a hip and knee replacement would cost a patient with 20 percent co-insurance \_\_\_\_\_ more if performed at RHS’s rates rather than SIR’s rates. In addition, two health plans are currently negotiating to bring SIR into their provider networks; for these health plans, RHS will be able to demand and obtain much higher rates than SIR could independently. Local employers are equally concerned that the Acquisition will burden them with even higher employee healthcare costs, potentially forcing them to cut benefits.

8. The Acquisition also would eliminate important competition between SIR and RHS to maintain and improve the quality of their facilities and services. SIR’s high quality and patient satisfaction is likely to be diminished under RHS’s more bureaucratic management. The Acquisition also eliminates RHS’s acknowledged incentive to improve its own quality to compete with SIR.

9. Entry or expansion by other providers of the relevant surgical services will not mitigate the loss of price and non-price competition in the near future, if ever. Hospitals in the area surrounding the Reading area, and the existing ambulatory surgery centers within the Reading area, are unable to and uninterested in expanding their services due to, among other things, RHS’s dominance over primary care physicians and a shortage of surgical specialists in the area. Even St. Joseph, the only other general acute-care hospital in the Reading area, has had

## Complaint

difficulty recruiting specialists for services included in the relevant service markets, and thus could not likely increase its surgical capacity. In addition, because the Patient Protection and Affordable Care Act (“PPACA”) precludes the building of any new physician-owned hospitals, as well as expansion of existing physician-owned hospitals, a group of physicians cannot replicate SIR’s entry for inpatient services. There are no verifiable or merger-specific efficiencies or quality claims that would come close to offsetting the serious competitive harm threatened by the Acquisition.

**II.****BACKGROUND****A.****Jurisdiction**

10. RHS and SIR are, and at all relevant times have been, engaged in commerce or in activities affecting commerce, within the meaning of the FTC Act and the Clayton Act. The Acquisition constitutes an acquisition under Section 7 of the Clayton Act.

**B.****Respondents**

11. Respondent RHS is a not-for-profit healthcare system incorporated under and by virtue of the laws of Pennsylvania. RHS is headquartered at 300 South 6th Avenue, West Reading, Pennsylvania 19611. RHS owns and operates Reading Hospital, a general acute-care hospital that has 735 licensed beds. RHS also owns a 112-bed post-acute rehabilitation center and a continuing care retirement community facility. RHS is by far the largest employer of physicians in the Reading area, employing about 332 physicians. During fiscal year 2011, RHS generated \$47 million in operating income with \$132 million in EBITDA income. RHS currently holds approximately \$1.05 billion of unrestricted cash and investments.

### Complaint

12. RHS is also a 50 percent owner of SurgiCenter at Spring Ridge (“SurgiCenter”), an outpatient ambulatory surgery center with eight operating rooms, and of Berkshire Health Partners (“BHP”), a provider network that contracts with employers and health plans and does credentialing of physicians and organizations to participate in the network. RHS negotiates reimbursement rates with health plans on behalf of SurgiCenter and it has significant control over SurgiCenter’s daily operations. In the ordinary course of business, RHS treats SurgiCenter as its own facility in competitive analyses and market share calculations. Thus for purposes of the competitive analysis, and for measuring market shares and market concentration, SurgiCenter is properly included as part of RHS. Similarly, BHP is effectively controlled by RHS. For example, BHP’s CEO reports directly to RHS’s CEO.

13. Respondent SIR, organized as a limited partnership under the laws of Pennsylvania, is a for-profit specialty surgical hospital located at 2752 Century Boulevard, Wyomissing, Pennsylvania 19610. SIR has 15 licensed beds and provides a variety of inpatient and outpatient surgical services, including ENT, orthopedic, spine, neurological, and general surgery procedures. A group of 16 physicians owns 85 percent of SIR, with the remaining 15 percent owned by Nueterra Healthcare LLC (“Nueterra”), a developer and manager of surgery centers. During fiscal year 2011, SIR generated \_\_\_\_\_ in operating revenue and its net income totaled over \_\_\_\_\_

### C.

#### **The Acquisition**

14. Under the terms of the asset purchase agreement signed on May 21, 2012, RHS will acquire all of SIR’s assets, including Nueterra’s 15 percent ownership interest. Accordingly, RHS will control SIR’s strategic planning, contracting and pricing decisions, operating and capital budgets, large unbudgeted expenditures, and borrowing and contracting decisions.

## Complaint

RHS agreed to pay \_\_\_\_\_ to acquire SIR than the next-highest bidder.

**D.****Competition Between Healthcare Facilities**

15. Competition between hospitals occurs in two stages. In the first stage, hospitals compete to be selected as in-network providers to commercial health plans' members. To become an in-network provider, each hospital engages in negotiations with each health plan and enters into a contract. Reimbursement rates that apply when the health plan's members obtain care at the facility or from its employed physicians are the chief contractual terms to be negotiated and agreed upon.

16. Hospitals benefit from in-network status by gaining access to the health plan's members as patients. Health plans benefit by being able to create commercially marketable and appealing provider networks, with geographic coverage and a scope of services sufficient to attract and satisfy a localized group of members, typically employers and their employees.

17. Changes in the reimbursement rates negotiated between the facilities and the health plans impact the health plan's members, *i.e.*, local employers and their employees, greatly. "Self-insured" employers rely on the health plan for access to the provider network and the health plan's negotiated rates, but such employers pay their employees' health care claims directly. Thus, self-insured employers, not commercial health insurance companies, bear the full burden of any increases in the rates applicable to services used by their employees. "Fully-insured" employers and their employees pay premiums, co-pays, and deductibles in exchange for access to a health plan's provider network and also for insurance against the cost of care. Nevertheless, when the cost of care rises, for example due to rate increases, health plans ultimately pass on some or all of the increases to their fully-insured customers. Regardless of whether an employer is self-insured or fully-insured, the health plan acts on its behalf – and by extension acts on behalf of its employees – in creating provider networks that offer convenience, high quality of care, and negotiated reimbursement rates.



### Complaint

18. In the second stage of competition, each hospital or facility competes with other in-network providers to attract patients. Health plans typically seek to offer multiple in-network providers with similar out-of-pocket costs. Providers included in the same network must compete to attract patients by offering better services, amenities, convenience, quality of care, and patient satisfaction than their competitors.

### III.

#### ANTICOMPETITIVE EFFECTS

##### A.

#### **Loss of Price Competition and Increased Bargaining Leverage of RHS**

19. The Acquisition will eliminate significant head-to-head competition between the Respondents and therefore increase RHS's ability and incentive to unilaterally demand higher reimbursement rates from commercial health plans.

20. RHS already is the dominant healthcare provider in the Reading area due to its market share and its ownership of the largest hospital, several outpatient facilities, two large physician groups, and a local provider network. Health plans, credit rating agencies, and RHS's own executives agree that RHS is dominant in the area. A consumer survey commissioned by RHS reflected the views of local residents, who describe RHS as "dominating," "power hungry," "large and expensive," and "taking over everything."

21. As the dominant provider in the Reading area, RHS already has significant bargaining leverage during contract negotiations with health plans, enabling it to extract very high rates for its services. Indeed, it is one of the most expensive healthcare providers in central Pennsylvania. RHS is widely recognized by health plans as having the highest rates in the Reading area and for making aggressive rate increase demands, relative to other hospitals. RHS's CFO provided testimony that it uses its leverage over health plans to receive the highest rates possible.

## Complaint

22. SIR entered the market in 2007 as a small but potent challenger to RHS's dominance. SIR offers substantially lower rates to health plans for its services than RHS and also offers a convenient, high-quality alternative for patients. Competition from RHS has helped to keep SIR's rates low in the years since its opening.

23. Even before SIR opened, RHS prepared for the impact it would have on its revenue and volumes. In January 2007 – on the virtual eve of SIR's entry – RHS executives projected losing 60 percent of their surgical cases at Reading Hospital and 80 percent of cases at RHS's SurgiCenter facility.

24. Shortly after SIR's opening, there was indeed a significant shift in patient volume for surgical services from RHS to SIR. RHS's former CFO testified that "SIR's entry had a significant impact on both RHS's patient volume and revenue." A third-party analysis, commissioned by RHS in 2010, notes "declines in surgical procedures, as high as 80 [percent]" at RHS between 2008 and 2010 and attributes these "notable losses of volume" to SIR's increased presence in the market. The report highlighted losses in ENT, orthopedics, and general surgery. A 2010 assessment of surgical services similarly notes that "the largest loss of surgical share occurred in the Primary Service Area and the Northeast SSA [Secondary Service Area] due primarily to the opening of the Surgical Institute of Reading." In 2011, a RHS strategic plan noted that "RHS is seeing a significant decrease in elective joint replacement surgery directly due to the physician-owned Surgical Institute of Reading."

25. RHS executives were alarmed by the loss of volume to SIR. In early 2009, RHS's Director of Marketing wrote that "it is clear that anyone who is not impacted by [insurance issues] is choosing to go to SIR. Ouch." In May 2009, the same executive wrote, "Our real nemesis at this point is SIR!!" and observed that "by service line [it's] even a harder hit . . . [SIR has] 10% of the overall inpatient orthopaedic market share in Berks County." Another RHS executive, reviewing market shares for inpatient orthopedic surgical services, noted it was "not a pretty picture with SIR in the mix."

## Complaint

26. SIR's ordinary-course-of-business documents also underscore the close competition between RHS and SIR for patients needing surgical services. An analysis conducted by a third party, based on information provided by SIR, describes RHS as SIR's "[p]rimary competitor." SIR's internal documents addressing the local marketplace overwhelmingly focus on competition with RHS, noting, among other things, the wide differences in rates that the two charge health plans for the same services as well as the higher patient satisfaction scores for services provided at SIR.

27. RHS responded vigorously to the loss of surgical volume to SIR. First, RHS offered discounted rates to several major health plans in exchange for excluding SIR from their provider networks. Most health plans declined the rate discounts because of the importance of SIR to their provider networks and to their members. Accordingly, due to competition between SIR and RHS, health plans in the Reading area had a choice between two beneficial options: (1) to exclude SIR from their provider network and receive a discount from the more expensive, dominant RHS; or (2) to contract with SIR at significantly lower rates than RHS, lowering costs and increasing access for their membership. After the Acquisition, both options are lost.

28. RHS also responded to competition from SIR by using its influence with BHP to steer patients to RHS and away from SIR, including excluding SIR as an in-network provider for its employees. RHS is the largest employer in the Reading area and, thus, a substantial number of individuals in the Reading area could not receive in-network coverage for services provided at SIR. Similarly, RHS's employed primary care physicians refused to refer patients to SIR specialists unless they agreed to perform the necessary surgeries at a RHS-owned facility, rather than SIR.

29. Ultimately, RHS decided that it made more sense to respond to the competition from SIR by seeking to acquire it and thereby eliminate it as a competitor. RHS's CEO admitted as much, confessing in internal company documents that the acquisition of SIR was both "defensive and offensive," believing that if SIR were acquired by another entity, even more volume would leave RHS. Elsewhere, he described the Acquisition as "a smart defensive move to protect the hospital's market share." The

## Complaint

fact that RHS was willing to pay a considerable premium to purchase SIR – than the next highest bidder – indicates that the Acquisition offers significant additional value to RHS because it eliminates a close competitor, and also prevents that competitor from being acquired by a potential rival.

30. The Acquisition of SIR makes it all the more essential for Reading area employers and health plan members to have access to RHS facilities. As such, RHS will have greater leverage in negotiations with health plans – and the ability to demand higher reimbursement rates – after the Acquisition than before.

31. One of SIR's motivations for entering into the Acquisition was SIR's physician owners privately acknowledged that an affiliation with a "large Medical System" in the area (*i.e.*, RHS) would cause reimbursement rates to

32. Health plans likewise anticipate a significant increase in SIR's rates, even to RHS's current rates, for the same services as a result of the Acquisition. An increase in SIR's rates to the level of RHS's rates would cause

for services obtained at SIR. For some procedures, such as hip and knee replacements, patients with co-insurance would have to pay thousands of dollars more out-of-pocket for procedures performed at SIR.

33. SIR's current contracts with the major health plans are

As such, once the Acquisition closes, RHS will be able to terminate SIR's contracts and demand higher reimbursement rates from health plans at SIR in short order.

34. SIR does not currently have contracts with the health plans

If consummated, the Acquisition would allow RHS to extract much higher reimbursement rates from than SIR could independently.

### Complaint

35. The costs of rate increases resulting from the Acquisition will be borne directly by or passed on to local employers and their employees. In the Reading area, the majority of commercial health-plan membership is comprised of self-insured employers. Self-insured employers rely on health plans only to negotiate rates and provide administrative support; the employers themselves pay the full cost of their employees' healthcare. As a result, self-insured employers immediately and directly bear the full burden of higher rates. Meanwhile, health plans pass on some or all costs of hospital rate increases to their fully-insured customers.

36. Employers, in turn, generally must pass on their increased healthcare costs to their employees, in whole or in part. Employees will bear these increased costs in the form of higher premiums, higher co-payments, reduced coverage, restricted services, or reductions in wages or other benefits. Some Reading area residents may therefore forgo or delay necessary healthcare services because of the higher costs, while others may drop their insurance coverage altogether.

### **B.**

#### **The Acquisition Eliminates Vital Quality Competition**

37. Since SIR's entry into the Reading area in 2007, local residents have benefited from vigorous head-to-head competition between RHS and SIR to improve the quality of care offered in the Reading area. In fact, SIR entered the market because its physician owners felt that the other Reading area providers – where they were previously performing surgeries – were not “providing adequate care for [their] patients.” Thus, SIR was created as a “patient-focused hospital,” offering 24-hour visitation, quick schedule times, private rooms, and lower infection rates.

38. Currently, SIR not only offers lower rates than its acquirer, RHS, but it also provides a high quality of care and better patient service. Through its excellent service and high quality of patient care, SIR has achieved patient satisfaction rates that are above national standards. Indeed, a recent federal government report revealed that SIR had significantly higher patient satisfaction rates than RHS and St. Joseph.

## Complaint

39. RHS's ownership and management threaten to diminish SIR's patient satisfaction levels and quality of care. The Acquisition will likely reduce SIR's patient satisfaction levels, or at a minimum reduce the competitive incentive to maintain and improve these levels, and thus lower the quality of care offered to Reading area residents. Much of SIR's high quality and exceptional service can be attributed to its physician-driven management that is less bureaucratic than RHS. One of the SIR owners stated

I

40. The Acquisition will also dampen RHS's incentive to improve its own quality and efficiency to compete with SIR. RHS noted in an internal document that it "struggles to provide the same level of service and amenities as competing [ambulatory centers and specialty facilities]." Another RHS document describes the loss of "higher-reimbursed patients" to SIR, concluding that "[w]e must be aggressive in our response to improve our services so that patients will want to come to [Reading Hospital]." Similarly, another document states that RHS must "combat" SIR by "provid[ing] the best patient experience as well as continue to provide the best clinical outcomes."

## IV.

**THE RELEVANT SERVICE MARKETS**

41. The direct evidence above demonstrates the vigorous head-to-head competition between RHS and SIR that will be lost if the Acquisition is consummated, leading to higher prices and lower quality for Reading area residents. It can be inferred from this evidence alone that the Acquisition will result in serious competitive harm. In this case, however, the direct evidence is consistent with, and provides strong additional support for, the presumption of harm under the case-law and Merger Guidelines that is triggered by the substantial increases in market share and market concentration that the Acquisition would create in each of the four relevant markets discussed below. Each market consists of a cluster of surgical services that both RHS and SIR offer in

Complaint

head-to-head competition with each other to commercially-insured residents of the Reading area.

**A.**

**Inpatient Orthopedic Surgical Services**

42. The first relevant service market is inpatient orthopedic surgical services contracted for by commercial health plans. The service market encompasses a cluster of basic orthopedic and spine surgical services offered by both RHS and SIR that require an overnight hospital stay, such as knee, hip, and joint replacement surgeries and spinal fusions. This market accounts for the vast majority of SIR's inpatient surgical cases. The services included in the inpatient orthopedic surgical services market are performed by board-certified orthopedic surgeons and neurosurgeons.

43. Although the Acquisition's likely effect on competition could be analyzed separately for each of the dozens of affected medical procedures, it is appropriate to evaluate the Acquisition's likely effects across this cluster of services because the group of services is offered to Reading area residents under similar competitive conditions. For example, the inpatient orthopedic services are offered by the same set of competitors. Thus, the Acquisition is likely to impact competition, and patients, in the same way for each of the services involved in the relevant cluster.

44. The inpatient orthopedic surgical services market does not include outpatient services – those not requiring an overnight hospital stay – because the competitive environment surrounding those services is different, including that they are offered by a different set of competitors in the Reading area. In addition, inpatient services must be provided in a hospital setting, unlike outpatient procedures, which may be offered in a hospital or ambulatory surgical center.

## Complaint

**B.****Outpatient Orthopedic Surgical Services**

45. The second relevant market in which the Acquisition threatens substantial competitive harm is outpatient orthopedic surgical services contracted for by commercial health plans. This market encompasses a cluster of orthopedic surgical services offered by both RHS and SIR that do not require an overnight hospital stay, including carpal tunnel surgery, knee and shoulder arthroscopic surgeries, rotator cuff surgery, and surgical procedures that affect the spinal column or neck. The services included in the outpatient orthopedic surgical services market are performed by board-certified orthopedic surgeons and neurosurgeons.

46. It is appropriate to evaluate the Acquisition's likely effects across this cluster of services, rather than analyzing each outpatient orthopedic service independently, because the group of services is offered to Reading area residents by a unique set of providers under similar competitive conditions.

**Outpatient Ear, Nose, and Throat Surgical Services**

47. The third relevant market in which the Acquisition threatens substantial competitive harm is the market for outpatient ENT surgical services contracted for by commercial health plans. This market encompasses a cluster of ENT surgical services offered by both RHS and SIR that do not require an overnight hospital stay, including tonsillectomies, nasal septum surgeries, thyroid procedures, and sinus endoscopies. The services included in the outpatient ENT surgical services market are performed by board-certified otolaryngologists.

48. It is appropriate to evaluate the Acquisition's likely effects across this cluster of services, rather than analyzing each outpatient ENT service independently, because the group of services is offered to Reading area residents by a unique set of providers under similar competitive conditions.



## Complaint

## C.

**Outpatient General Surgical Services**

49. The fourth relevant market in which the Acquisition threatens substantial competitive harm is the market for outpatient general surgical services contracted for by commercial health plans. This market encompasses a cluster of outpatient general surgery procedures offered by both RHS and SIR that do not require an overnight hospital stay, including hernia repair, cholecystectomy (*i.e.*, gall bladder removal), breast lesion removal and biopsies, and black lesion excisions. Outpatient general surgical services are performed by board-certified general surgeons.

50. It is appropriate to cluster these services together as they are offered under similar competitive conditions, including being offered by a unique set of competitors. That set of competitors differs from the set of competitors for the other two outpatient relevant service markets but is similar to the set of competitors that offers inpatient orthopedic surgical services market. However, the respective market shares of the overlapping competitors (namely, Reading Hospital, SIR, and St. Joseph) differ between outpatient general surgical services market and the inpatient orthopedic surgical services market, and RHS's SurgiCenter competes in this market, unlike the inpatient orthopedic services market. Also, outpatient general surgical services need not be performed in a hospital, unlike the services in the inpatient orthopedic surgical services market.

## V.

**THE RELEVANT GEOGRAPHIC MARKET**

51. The relevant geographic market in which to analyze the effects of the Acquisition for each relevant service market is the area corresponding to Reading Hospital's primary service area, which is defined by RHS in the ordinary course of business as the set of zip codes from which Reading Hospital draws approximately 85 percent of its patients (the "Reading area"). This area encompasses most of Berks County.

## Complaint

52. In a merger case, the appropriate geographic market is “the area in which consumers can practically turn for alternative sources of the product [or service] and in which the antitrust defendants face competition.” A relevant test to determine the boundaries of the geographic market is whether a hypothetical monopolist of the relevant services within the geographic area could profitably raise prices by a small but significant amount. If so, the boundaries of the geographic area are an appropriate geographic market. Defining the geographic market is a “pragmatic undertaking” and it should “correspond to the commercial realities of the industry.”

53. The Respondents’ own ordinary course of business documents reveal that they do not regard hospitals or ambulatory surgery centers outside of the Reading area as meaningful competitors for the relevant services at issue. Instead, Respondents focus their competitive efforts relating to these services on providers located in the Reading area, and especially each other.

54. RHS analyzes competitors and market shares for the affected services in the Reading area (*i.e.*, its primary service area) separately from other geographic areas. RHS has also used the Reading area as the basis for negotiations with health plans to exclude competitors from provider networks. Health plans, when preparing to negotiate with RHS, also analyze competition within the Reading area.

55. Reading area residents prefer to obtain surgical services that make up each of the four relevant markets locally. Health plans must therefore include hospitals and ambulatory surgery centers located in the Reading area in their provider networks in order to meet their members’ needs and desires for choice. Patients would not go to hospitals or ambulatory surgery centers outside of the Reading area in sufficient numbers to defeat a post-Acquisition anticompetitive rate increase within the Reading area in any of the four relevant service markets. As such, a hypothetical monopolist that controlled all of the relevant facilities in the Reading area could profitably raise rates by at least a small but significant amount.

Complaint

**VI.**

**MARKET STRUCTURE AND THE ACQUISITION'S  
PRESUMPTIVE ILLEGALITY**

**A.**

**Inpatient Orthopedic Surgical Services Market**

56. The Acquisition will reduce the number of significant providers of inpatient orthopedic surgical services in the Reading area from three to two. The only additional providers are of little competitive significance, each with a market share of less than four percent.

57. Under the relevant case law and the Merger Guidelines, the Acquisition is presumptively unlawful by a wide margin as it would significantly increase concentration in a market that already is highly concentrated.

58. RHS's post-Acquisition market share in the inpatient orthopedic surgical services market will be 66.5 percent (as measured by procedures), easily surpassing levels held to be presumptively unlawful by the Supreme Court. Post-Acquisition, two competitors, RHS and St. Joseph, would control about 78 percent of the inpatient orthopedic surgical services market in the Reading area, effectively a duopoly.

59. The Merger Guidelines measure market concentration using the Herfindahl-Hirschman Index ("HHI"). A merger or acquisition is presumed likely to create or enhance market power, and thus is presumed illegal, when the post-merger HHI exceeds 2500 points and the merger or acquisition increases the HHI by more than 200 points. Here, the market concentration levels exceed these thresholds by a wide margin. The post-Acquisition HHI in the inpatient orthopedic surgical services market will be 4585, an increase of 2050 points. The HHI figures for the inpatient orthopedic surgical services market are summarized in the table below.

## Complaint

<b>INPATIENT ORTHOPEDIC SURGICAL SERVICES</b>		
<b>Provider</b>	<b>Market Share (procedures)</b>	<b>Post-Acquisition</b>
<b>Reading Hospital</b>	<b>42.2%</b>	<b>66.5%</b>
<b>SIR</b>	<b>24.3%</b>	
St. Joseph	11.2%	11.2%
Lehigh Valley	3.9%	3.9%
Hershey	3.2%	3.2%
Thomas Jefferson	2.4%	2.4%
Pottstown Memorial	1.6%	1.6%
<b>HHI</b>	<b>2535</b>	<b>4585</b>
<b>Delta</b>	<b>2050</b>	

**B.****Outpatient Orthopedic Surgical Services**

60. The Acquisition will reduce the number of meaningful outpatient orthopedic surgical service competitors from four to three in the Reading Area. The only other providers of outpatient orthopedic surgical services in the Reading area, which each have a market share of 2.6 percent or less, are not significant competitors.

Complaint

61. Under the relevant case law and the Merger Guidelines, the Acquisition raises significant competitive concerns in the outpatient orthopedic surgical services market. Based on outpatient orthopedic procedures, RHS’s post-Acquisition market share will be 48.5 percent.

62. Under the Merger Guidelines’ market concentration test, the Acquisition will result in a highly concentrated market, and is presumptively illegal, because the post-Acquisition HHI increases 978 points to 2856. The HHI figures for outpatient orthopedic surgical services are summarized in the table below.

<b>OUTPATIENT ORTHOPEDIC SURGICAL SERVICES</b>			
<b>Provider</b>	<b>Market Share (procedures)</b>	<b>Share (by entity)</b>	<b>Post-Acquisition</b>
<b>SurgiCenter</b>	<b>19.9%</b>	<b>34.2%</b>	<b>48.5%</b>
<b>Reading Hospital</b>	<b>14.3%</b>		
<b>SIR</b>	<b>14.3%</b>		
Reading Surgery Center	20.1%	20.1%	20.1%
St. Joseph	8.9%	8.9%	8.9%
Hershey	2.6%	2.6%	2.6%
Premier Podiatric	2.2%	2.2%	2.2%
Lehigh Valley	1.8%	1.8%	1.8%

## Complaint

Pottstown Memorial	1.5%	1.5%	1.5%
<b>HHI</b>	<b>1878</b>		<b>2856</b>
<b>Delta</b>	<b>978</b>		

## C.

**Outpatient Ear, Nose, and Throat Surgical Services**

63. The Acquisition will reduce the number of significant competing providers of outpatient ENT surgical services from three to two in the Reading area, creating an effective duopoly of RHS and Pennsylvania Eye and Ear Surgical Center, together controlling over 84 percent of the market. The only other providers of outpatient ENT surgical services in the Reading area, which each have market shares of 2.3 percent or less, are not significant competitors.

64. Based on outpatient ENT procedures, RHS's post-Acquisition market share will be 58.2 percent. Already a highly concentrated market before the Acquisition, the post-Acquisition HHI in the outpatient ENT surgical services market will be 4085, an increase of 1614 points. Thus, by a wide margin, the Acquisition is presumed illegal in this market as well as under the Merger Guidelines. The HHI figures for the outpatient ENT surgical services market are summarized in the table below.

<b>OUTPATIENT EAR, NOSE, &amp; THROAT SURGICAL SERVICES</b>			
<b>Provider</b>	<b>Market Share (procedures)</b>	<b>Share (by entity)</b>	<b>Post-Acquisition</b>
<b>SIR</b>	<b>35.4%</b>	<b>35.4%</b>	<b>58.2%</b>

Complaint

<b>SurgiCenter</b>	<b>11.8%</b>	<b>22.8%</b>	
<b>Reading Hospital</b>	<b>11.0%</b>		
Penn. Eye & Ear	26.1%	26.1%	26.1%
Hershey	2.3%	2.3%	2.3%
University of Pennsylvania	2.1%	2.1%	2.1%
St. Joseph	2.0%	2.0%	2.0%
Pottstown Memorial	1.8%	1.8%	1.8%
<b>HHI</b>	<b>2471</b>		<b>4085</b>
<b>Delta</b>	<b>1614</b>		

**D.**

**Outpatient General Surgical Services**

65. The Acquisition will eliminate significant competition in the outpatient general surgical services market by reducing the number of significant competitors from three to two – again creating a virtual duopoly – with RHS and St. Joseph together controlling over 84 percent of the outpatient general surgical services market in the Reading area. The additional providers of outpatient general surgical services in the Reading area, which each have market shares of 1.4 percent or less, are not significant competitors.

66. The Acquisition is once again presumptively illegal under the relevant case law and the Merger Guidelines. RHS’s post-

## Complaint

Acquisition market share in the outpatient general surgical services market will be 71.5 percent (as measured by procedures), far surpassing levels held to be presumptively unlawful by the Supreme Court. The post-Acquisition HHI also exceeds the presumption of illegality in the Merger Guidelines by a wide margin, with an increase of 2001 points to 5287. The HHI figures for the outpatient general surgical services market are summarized in the table below.

<b>OUTPATIENT GENERAL SURGERY</b>			
<b>Provider</b>	<b>Market Share (procedures)</b>	<b>Share (by entity)</b>	<b>Post-Acquisition</b>
<b>Reading Hospital</b>	<b>35.3%</b>	<b>52.4%</b>	<b>71.5%</b>
<b>SurgiCenter</b>	<b>17.1%</b>		
<b>SIR</b>	<b>19.1%</b>		
St. Joseph	12.9%	12.9%	12.9%
Reading Surgery Center	1.4%	1.4%	1.4%
Lehigh Valley	1.4%	1.4%	1.4%
Pottstown Memorial	1.4%	1.4%	1.4%
<b>HHI</b>	<b>3286</b>		<b>5287</b>
<b>Delta</b>	<b>2001</b>		



### Complaint

67. In each of the four relevant markets there is a presumption of illegality because the Acquisition results in the merged entity controlling a large percentage share for each relevant market and yields a significant increase in market concentration. Plaintiffs need only meet their burden with respect to one of the relevant markets to warrant relief from this Court.

## VII.

### **ENTRY BARRIERS**

68. Neither entry by new firms nor expansion by the few small remaining competitors will deter or counteract the Acquisition's likely serious competitive harm in the relevant service markets.

69. First, new entry or meaningful expansion into the relevant markets at issue is difficult and thus unlikely because of the foreclosure of surgical referrals from local primary care physicians. The vast majority of Reading area primary care physicians are employed by RHS or already affiliated with other existing facilities. Without adequate primary care physician referrals, it is impossible for a surgical facility to establish itself or grow an adequate patient base to become a meaningful competitor.

70. Another barrier to entry or expansion is access to the requisite surgical specialists (*e.g.*, orthopedic and neurosurgeons for the inpatient and outpatient orthopedic surgical service markets, otolaryngologists for the outpatient ENT surgical services market, and general surgeons for the outpatient general surgical services market). Most surgical specialists in the Reading area are already affiliated with a facility and contractually restricted from performing surgeries elsewhere. Even RHS attempted but failed to recruit additional surgical specialists to better compete with SIR. Similarly, St. Joseph attempted to expand its orthopedic surgery program, but was unable to find sufficient orthopedic surgeons in the area. Thus, a new entrant or a competitor expanding its service offerings in the relevant service markets likely could not recruit the necessary additional surgical specialists.

## Complaint

71. RHS's ownership of BHP and control over its contracting practices creates another entry barrier. BHP offers a preferred provider organization to self-insured employers, including RHS itself, the largest employer in the Reading area. RHS has implemented a tiered BHP plan that places RHS facilities in a preferred tier, financially incentivizing RHS employees to utilize RHS providers. Thus, RHS employees pay significantly higher out-of-pocket costs to use competing facilities and therefore rarely seek services outside the RHS system. Accordingly, a new entrant or competitor attempting to expand its services would be unable to attract patients from the area's largest employer, hampering its ability to generate sufficient patient volume to be viable.

72. An additional barrier to entry or significant expansion in the inpatient orthopedic surgical services market arises from restrictions contained in the PPACA. Based on recent history, the most likely entrant into this market would be another physician-owned specialty hospital. Under PPACA, however, no new physician-owned hospitals can be built, and all physician-owned hospitals that were completed by the end of 2010, are prohibited from expanding the number of beds, operating rooms, or procedure rooms. Because most, if not all, of the ambulatory surgery centers in the Reading area are at least partially owned by physicians, they are precluded from converting their facilities into hospitals and expanding their services to offer inpatient orthopedic surgical services.

73. Even if entry into the relevant markets were likely, it could not occur in a timely manner. Construction of an ambulatory surgery center requires between two and three years from the planning stages to being able to accept commercially-insured patients. It takes even longer to construct a hospital. Significant expansion of services takes several years as well, and requires time-consuming recruitment of additional professional staff and many modifications to an existing facility.

Complaint

**VIII.**

**EFFICIENCIES**

74. Extraordinary merger-specific efficiencies are necessary to justify the Acquisition in light of its vast potential to harm competition. No court ever has found, without being reversed, that efficiencies rescue an otherwise illegal transaction. Here, Respondents did not quantify or even consider efficiencies when contemplating the Acquisition, instead acknowledging that “the acquisition is unlikely to create any significant efficiencies.” Indeed, the likely outcome of the Acquisition is that SIR will be folded into RHS’s less efficient, more bureaucratic structure.

**IX.**

**VIOLATIONS**

75. The allegations of Paragraphs 1 through 74 above are incorporated by reference as though fully set forth.

76. The Acquisition, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an agreement constituting an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

**NOTICE**

Notice is hereby given to the Respondents that the sixteenth day of April, 2013, at 10:00 a.m. is hereby fixed as the time, and Federal Trade Commission offices, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580 as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

## Complaint

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14<sup>th</sup>) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the answer is filed by the Respondents. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the answer is filed by the Respondents). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answer, to make certain initial disclosures without awaiting a discovery request.

## Complaint

**NOTICE OF CONTEMPLATED RELIEF**

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Acquisition challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. Divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant markets, with the ability to offer such products and services as RHS and SIR were offering and planning to offer prior to the Acquisition.
2. A prohibition against any transaction between RHS and SIR that combines their businesses in the relevant markets, except as may be approved by the Commission.
3. A requirement that, for a period of time, RHS and SIR provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.
4. A requirement to file periodic compliance reports with the Commission.
5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore SIR as a viable, independent competitor in the relevant markets.

**IN WITNESS WHEREOF**, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this sixteenth day of November, 2012.

By the Commission.

Final Order

**ORDER DISMISSING COMPLAINT**

On November 16, 2012, the Federal Trade Commission issued the Administrative Complaint in this matter, having reason to believe that the proposed acquisition of Surgical Institute of Reading (“SIR”) by Reading Health System (“Reading”), if consummated, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Complaint Counsel and Respondents have now filed a Joint Motion to Dismiss Complaint, which states that Respondents have abandoned the proposed acquisition of SIR by Reading, and have committed to provide notice to Commission staff 30 days prior to consummating any transaction between the Respondents.<sup>1</sup>

The Commission has determined to dismiss the Administrative Complaint without prejudice, as the most important elements of the relief set out in the Notice of Contemplated Relief in the Administrative Complaint have been accomplished without the need for further administrative litigation.<sup>2</sup> In particular, Respondents have abandoned the proposed acquisition and have bound themselves to provide prior notice in the future, rendering them unable to effect the proposed transaction without first providing 30 days’ notice to Commission staff.

For the foregoing reasons, the Commission has determined that the public interest warrants dismissal of the Administrative Complaint in this matter. The Commission has determined to do so without prejudice, however, because it is not reaching a decision on the merits. Accordingly,

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1 See Joint Motion To Dismiss Complaint (November 30, 2012), at <http://www.ftc.gov/os/adjpro/d9353/121130jointmodismisscplt.pdf>.

2 See, e.g., *In the Matter of Omnicare, Inc.*, Docket No. 9352, Order Dismissing Complaint (February 22, 2012), at <http://www.ftc.gov/os/adjpro/d9352/120223omnicareorder.pdf>; *In the Matter of Thoratec Corporation and HeartWare International, Inc.*, Docket No. 9339, Order Dismissing Complaint (August 11, 2009), at <http://www.ftc.gov/os/adjpro/d9339/090811thoatecorder.pdf>.

Final Order

**IT IS ORDERED THAT** the Administrative Complaint in this matter be, and it hereby is, dismissed without prejudice.

By the Commission, Commissioner Rosch abstaining.